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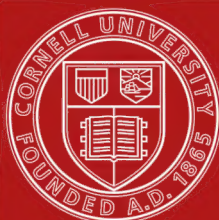
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HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART VIII

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, February 2, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann in the chair.

Mr. LINCOLN. I should like to call Mr. Evans, Mr. Chairman.

STATEMENT OF MR. W. J. EVANS, OF CHICAGO, ILL.

Mr. EVANS. I am not going to take very much of your time this morning, Mr. Chairman. I will make my remarks as brief as possible. I simply wish to say in starting that as the representative of 200 of the largest manufacturers of implements and vehicles in this country, I heartily support all that has been said by Mr. Lincoln.

The CHAIRMAN. Will you not tell us first your name and whom you represent?

Mr. EVANS. My name is W. J. Evans; I am secretary of the National Association of Agricultural Implement and Vehicle Manufacturers.

The CHAIRMAN. What is your location?

Mr. EVANS. At Chicago.

The CHAIRMAN. With what concern?

Mr. EVANS. I am secretary of the National Association. Previously, for the past ten years, I was traffic manager of the Kingman Plow Company and the Peoria Cordage Company, at Peoria, Ill., and president of the Peoria Shippers' Association.

Mr. LINCOLN. Mr. Evans, how long a railroad experience did you have?

Mr. EVANS. I had a railroad experience of about seventeen years, starting as a boy 15 years of age.

The CHAIRMAN. With what roads?

Mr. EVANS. I was with the Chicago, Milwaukee and St. Paul, the Chicago, St. Louis, Minneapolis and Omaha, and the St. Louis, Minneapolis and Manitoba (afterwards the Great Northern), in various capacities from car clerk to assistant general freight agent.

The CHAIRMAN. What was the last position you held?

Mr. EVANS. The last position I held was that of general agent at St. Louis, in charge of all southern territory, especially looking after the export traffic of the Great Northern—cotton and cotton-pieco-goods for the Orient. I do not claim to be a traffic manager; but Mr. Lincoln thought I might say a few words.

As you gentlemen probably know, the agricultural implement and vehicle dealers of this country are organized into what they call federations—local federations and state federations; and the various state organizations are in a national organization known as the National

Federation of Dealers' Associations. They are organized principally for the purpose of settling their little differences with the manufacturers, through the national association, of which I am secretary. The various state dealers' associations have recently passed resolutions requesting the state federations to arrange with my association to secure in bills of lading the insertion of rates and actual weights. It appears that there is a growing demand for knowledge on the part of consignees as to what freight charges ought to be assessed on each shipment. I am trying, in my capacity, to induce manufacturers to insert the actual weight, and secure the insertion of the legal published rate, on all bills of lading. I am doing that by circular letters. We are nearly all using the uniform bills of lading. As Mr. Lincoln has stated, there are blank spaces for the rate and the weight, the latter being subject to correction; and we desire the blanks made complete.

Mr. ESCH. That is the bill of lading recommended by the Interstate Commerce Commission?

Mr. EVANS. It is; yes, sir. We desire to have that done simply as a matter of information to the retail dealers, who are nearest the actual consumers.

I am especially interested, not only as a representative of the vehicle-implement manufacturers, but personally, in the routing of freight. One of my objections to giving the routing to the railroads is that it is in the direction of a pool; and I am unalterably opposed to any pooling of revenue or tonnage.

I believe that shippers generally desire the right to route their own freight for tracing purposes. When I became connected with the Kingman Plow Company at Peoria, I found that they were purchasing about 4,500 cars of goods per year in the Eastern States, taking the output of factories in Michigan, Indiana, Ohio, and New York, and were simply telling the factories to ship "via the Rock Island, general instructions." I found that I could not ascertain anything at all about the goods which were in transit. I immediately gave these instructions to the factories: On each and every car I designated the route from the initial point to the first junction, to the second junction, and to the third junction. In other words, I routed each and every car of freight through from the initial point to destination, having been advised in advance by our branch managers of the placing of every car-load order. I not only directed that movement in detail, but I directed that all the business move via Peoria, so that I might tell at any time whether a car had reached Peoria or whether it had passed Peoria.

Mr. STAFFORD. Did the routing that you speak of permit of the carriage by the initial carrier over his entire line, or would you break his carriage at some intersecting point?

Mr. EVANS. As a rule, the initial carrier furnished the equipment, and we felt that we were under obligations to that initial carrier, and therefore we gave them the right to take that freight as far as they possibly could over their own rails.

Mr. STAFFORD. I suppose that if this routing proposition is granted, it will confer upon the shipper the right to have the shipment carried over but a portion of the initial carrier's route, provided there is some other line that the shipper might designate at some intermediate section point?

MR. EVANS. I believe that every shipper is disposed to give each line as long a haul as possible, especially the initial line, which furnishes the equipment, and goes to the trouble of furnishing rates.

MR. STAFFORD. They might be so disposed; but under those circumstances would not the shipper have the right to have the shipment carried merely a short space, until some junction point was reached where he might wish to have it carried over some other line?

MR. EVANS. I have only known of a very few cases of that kind.

MR. STAFFORD. If that were the condition, would not that possibly interfere with the rapidity of traffic on the main line of railroad?

MR. EVANS. I hardly think so. The large concerns employ traffic managers who are generally familiar with the established routes; and they know whether or not there are congestions at these junctions. If the traffic men generally do as I did, they would not object to a change under unusual circumstances.

MR. LINCOLN. Mr. Evans, in directing the routing of that freight you only employ those routes by which there are published through joint rates?

MR. EVANS. Certainly.

MR. LINCOLN. You only make use of the lines as they advertise?

MR. EVANS. We made use of those lines which published the rates, and, as a rule, those which could promise the best service. I made two or three mistakes which I recall, where I sent freight over the higher-rate routes, and had to take my medicine. I was charged in one or two cases with local rates because, as I supposed, there were no through rates published. In other cases I had to stand an overcharge of 3 or 4 cents per hundred; and I felt that there was nothing to do except to stand that overcharge.

Another thing: Under nearly all the railroad carriers' rules the implement and vehicle manufacturers are permitted to stop cars of implements and vehicles in transit to finish loading, or to partly unload. It becomes very necessary that these cars shall reach the stop-over point over certain rails. For instance, if I am located on the Rock Island tracks at Peoria, it is to my advantage to have those shipments reach Peoria over the Rock Island, thus preventing delays and avoiding the payment of extra switching charges, because the incidental charges at stop-over points are paid by the owners of the property. We have found it necessary also to direct the routing, because we desired deliveries at our branch-house points—St. Louis, Kansas City, Omaha, Dallas, Denver, etc.—via certain lines on whose rails we were located, preventing delays in delivery of goods which were seasonable.

Four or five years ago I was notified by our manager at Kansas City that he was "tied up," as he expressed it; he could not make any shipments via the Santa Fe. The Santa Fe covers a very large territory in Kansas, as you gentlemen know; and our business was moving to those points, and the Santa Fe could not furnish cars. They were using their cars in other lines of traffic. I had to go to Kansas City to see what the trouble was; and I discovered at once what it was. It had not occurred to me previously. Our business was moving into Kansas City over the Rock Island and the Chicago, Burlington and Quincy, because they were able to furnish cars from the eastern points. The Santa Fe road was not getting the business. Therefore, whenever we attempted to ship out over the Santa Fe

we could not get cars. I immediately made arrangements to use the Santa Fe in connection with the Iowa Central from Peoria, thus sending the cars which we wanted for loading from Kansas City into Kansas City over the Santa Fe. In two or three days our troubles were at an end.

Another point I should like to mention is this: Manufacturing concerns receive many more cars of raw material than they ship of the manufactured product; and thus, each day, they make nearly all the empties that they require for out-bound loading. If they are able to route their own freight, they can direct the movement into the factory points via those lines which they want to use for out-bound business. It is a saving of time and money to the manufacturers and shippers, and it is a saving of money and equipment to the carriers. I believe that to-day there exists a spirit of good will and of reciprocity between the carriers and the shipping public. This antagonism that we hear so much about in the newspapers does not exist except in isolated cases. The shippers who have any volume of business to move know when that business is going to move; they talk it over with the carriers most directly interested, and they arrange between themselves for a car supply. I can not conceive of a situation in which a shipper would insist upon the routing of either perishable or nonperishable freight via certain lines if he knew that certain routes were not available, or there were not cars to move the traffic via the lines which he desired to favor.

Mr. ADAMSON. If there should be a good reason why the railroad could better ship by a different route without injury to the shipper, you would be willing to have some exceptions, would you not?

Mr. EVANS. I would; and I believe there is a provision in the proposed amendment giving the Interstate Commerce Commission, in its discretion, a chance to take advantage—

Mr. ADAMSON. And you would want provision made for the exceptions in advance of their occurrence?

Mr. EVANS. Yes, sir. I believe that every shipper is disposed, under abnormal conditions, to say to the carrier:

We will not insist upon this; take it via the routes that are open.

Mention was made yesterday of a strawberry shipper who would insist upon routing via certain lines, and allow his strawberries to become damaged because cars could not be furnished. During my connection with the Great Northern Railway I had in my territory the town of Princeton, Minn. Princeton ships every fall about 4,000 or 5,000 cars of potatoes to all points, especially southeastern, southern, and southwestern points. It was necessary to anticipate that movement and provide equipment. The shippers knew about on what day the movement would begin, and the carriers were advised. The Great Northern Railway was asked to secure equipment, and we never had much trouble. The shippers controlled the routing. We knew in a general way what lines they wished to favor to points like Kansas City, Dallas, Fort Worth, Denver, and so on; and if we could not furnish our own cars we hired cars from private car companies, such as the Armours and the Swifts and the California Fruit Exchange; and the traffic was moved without loss or inconvenience.

Mr. WASHBURN. Permit me to make this inquiry: Suppose there were no provision in this bill reserving to the Interstate Commerce Commission the right to make conditions under peculiar circumstances. Do you believe, as a matter of practice, that there would be many cases where the shipper and the carrier would disagree?

Mr. EVANS. I think the cases would be very few and far between. In all my experience I know of only two or three cases where there was such an antagonism between a shipper and a carrier that the shipper felt that he must insist upon his routing. Of course if he did that he had to take the circumstances, and he ought to take them.

Mr. STEVENS. You were connected with the Great Northern Railroad for some time?

Mr. EVANS. Yes, sir; for eleven years.

Mr. STEVENS. Do you not recall some instances where special shippers at Duluth disagreed with the Great Northern over the routing of freight, and charges were made, I think, against that company, among others, and those papers came before this committee on that very point, and this very testimony was given that was brought out yesterday?

Mr. EVANS. When did that occur, Mr. Stevens?

Mr. STEVENS. It was the case of the Ferguson Company; I think about three years ago.

Mr. EVANS. I stated when I opened my remarks that I left the Great Northern Railway ten years ago.

Mr. STEVENS. Oh, well, that was about three years ago. This very class of cases occurred—disputes over routing, where the shippers desired to route; and they were willing to inconvenience a whole section of the country for the sake of fighting it out with the railway company.

Mr. EVANS. I can believe that that might occur on the line of the Great Northern Railway. Mr. James J. Hill was in years gone by greatly disliked by the patrons of the Great Northern; and I have seen shippers use all possible means to divert traffic to the Northern Pacific because they disliked the methods of the Great Northern.

Mr. STEVENS. Is it safe, then, where this may occur anywhere or at any time, to leave entirely to the shippers the control of traffic when it may involve the destruction of the crops of a whole section of the country?

Mr. EVANS. I believe it is, provided you include that saving clause, leaving it to the discretion of the Interstate Commerce Commission to arrange for emergencies.

Mr. ADAMSON. Do you think our legislation here would remove the unpopularity of Mr. Hill?

Mr. EVANS. The harmonious working of the shippers and the carriers is becoming more pronounced every day. The Interstate Commerce Commission has done a great deal in simplifying tariffs, in securing uniformity of blanks, and in various ways in rounding off the sharp corners; and I believe that the movement will continue. The tariffs are going to become simpler, and the relations between carriers and shippers are going to be more harmonious in the future than in the past. I am a sort of an optimist on that; and I believe that this better feeling is very largely due to the fact that the shippers, through their organizations, deal with the carriers through their organizations. Each one crystallizes its ideas, and there is not such a con-

flict as there used to be where individuals went after certain things which they believed vital to their own interest. The carriers have said to us repeatedly in classification matters that if the shippers would agree as to what they wanted and submit their wishes, they would give them a hearing. If I went to the classification committee meeting, and I wanted first class, and my neighbor wanted second class, and another neighbor wanted third class, and some other fellow wanted fourth class, they were hardly in a position to deal out justice. But if we would meet in advance and agree upon some rating, giving and taking, they would listen to our appeals.

Mr. RICHARDSON. I was not in the room when you began. You represent the shippers, as Mr. Lincoln does?

Mr. EVANS. Yes, sir; I represent an association of about 345 manufacturing concerns.

Mr. RICHARDSON. I want to ask you a question that I commenced yesterday afternoon. What do you think about the proposition of making all railroads do business and make exchanges with each other on the same basis?

Mr. EVANS. I think that I would hardly favor making that into a law.

Mr. RICHARDSON. You would not add that provision to existing law?

Mr. EVANS. I would not; no, sir.

Mr. RICHARDSON. Is it not the fact that as long as it is not a law, the stronger systems of railroads have it in their power, by withdrawing rates and divisions and things of that kind, to absolutely crush the independent lines by making them load and unload at certain places, and by withdrawing rates and refusing divisions?

Mr. EVANS. It is my understanding that the Interstate Commerce Commission has the power to arrange through rates and routes.

Mr. RICHARDSON. Not over routes that a trunk line does not have traffic arrangements with—does not exchange business with, and does not run its cars over, or does not allow the cars of that line to run on its tracks. That puts it absolutely in their power to withdraw the rates and force into bankruptcy the independent line. In other words, the independent line can never be fostered and promoted in this country unless there is some regulation of this nature. The great systems can withdraw the rates and refuse divisions, and make them load and unload cars at given points. Was not that a great source of complaint out in the West, in making shipments from Kansas City to Port Arthur on the coast, and the same shipments from New York to Kansas City? Was not the Kansas City Southern Railway about in the act of being crushed some time since by reason of the Trunk Line Association refusing to do business with it? Saw-mills along the line of the Kansas City Southern that had made contracts on through rates and through lines were simply subjected to great privations and costs by having to pay local rates on both lines. That is not the law now as I understand it; but the tendency is going that way—to make that a law; to make all common carriers do business with each other on exactly the same basis.

Mr. EVANS. Would you also prescribe the divisions that the strong lines should make? Under a law of that kind, would you say how much the long line or the strong line should have?

Mr. RICHARDSON. I am not sufficiently informed about that matter to answer that kind of a question, because I do not know; but I do see this from the standpoint of common sense: That if the larger railroad system sees proper to withdraw all of its rates and not recognize an independent line, and not let its cars go on that line and not let the cars of that line come on its route, that means bankruptcy to the independent line. If proper divisions could not be agreed on, then the Interstate Commerce Commission should prescribe the division.

Mr. EVANS. I think you are speaking largely theoretically.

Mr. RICHARDSON. But it has been an actual fact.

Mr. EVANS. I only know of that single case, where the Kansas City Southern was considered a sort of an enemy or a prey upon the other lines.

Mr. RICHARDSON. Is it not a fact that the Kansas City Southern Railway did put all of its rates down to the very lowest rate that was enjoyed from New York to Kansas City? The Kansas City Southern adopted the very lowest rate; and yet it was boycotted by the Atchison Railroad, Missouri Pacific, Rock Island, Frisco, and so on—numbers of great railroads—and the Kansas City Southern was actually threatened with bankruptcy.

Mr. ESCH. Was not that during the days of the "midnight rates?"

Mr. RICHARDSON. No, sir; not that I am informed. But if it occurred once it can occur again unless prevented by law.

Mr. ESCH. Was not that prior to 1906?

Mr. RICHARDSON. No; I am not fully advised as to that. It actually occurred; and if it occurred once it can occur again.

Mr. WILSON. Yes, sir; it was prior to 1906.

Mr. ESCH. It was prior to 1906?

Mr. WILSON. Yes, sir.

Mr. RICHARDSON. It put its rates to the very lowest rate that obtained from New York to Kansas City in the same length of time. It ran from Kansas City to Port Arthur by way of Sabine Pass and Galveston, and brought the freight through in that way, and took the same length of time; and it was boycotted by all the roads above mentioned.

Mr. EVANS. I remember that very well; but it occurred, as I remember, about four years ago. I remember it, because I started some business over the Kansas City Southern, and either had to pay locals in and out of Kansas City because of the cancellation of the divisions or else I had to withdraw to other lines and suffer the losses.

Mr. RICHARDSON. As a well-informed gentleman (as I know you are), let me ask you whether that was not all attributable to the fact that these great railroad systems there (the Atchison, and so on, and other roads) would not allow the Kansas City Southern cars to come on their tracks, and would not allow their cars to go on the Kansas City Southern tracks? And was not the result of it that those people were subjected to the very great inconvenience and delay and expense of unloading everything that they received from those systems, as well as what they delivered to them?

Mr. EVANS. That is true.

Mr. RICHARDSON. That is true; and that condition can exist again, can it not?

Mr. EVANS. No, sir; I think not.

Mr. RICHARDSON. Why not? The present law does not regulate or prohibit it.

Mr. EVANS. Because of the community of interest which exists between the financiers who have charge of the various lines.

Mr. RICHARDSON. Oh, yes; but that is entirely "hypothetical." You mean by "community of interests" an agreement between the large systems. What I am talking about is this: Can it occur again; and if not, why not?

Mr. EVANS. It did occur.

Mr. RICHARDSON. It did occur; and having occurred once, it can occur again?

Mr. EVANS. I think not, sir.

Mr. RICHARDSON. Then do you not admit that under that evil, brought about by that combination of facts at that time, no independent line of railroad can now survive in this country?

Mr. EVANS. That is one of my arguments; that is why I feel that the routing of freight should be in the hands of the owners of the properties; otherwise the strong lines will use that tonnage to put out of existence the weaker lines.

Mr. RICHARDSON. But representing the interests of the shippers, would you not rather have an amendment to the law in this form—that every railroad shall be required to exchange business and do business with every other railroad on exactly the same basis?

Mr. EVANS. I should not object to a law of that kind.

Mr. RICHARDSON. Would you not prefer that? Do you not think the shipper would be better protected?

Mr. EVANS. Unless there is some constitutional objections which I can not foresee now. It had not been put up to me before, and I have not given it much thought. But if my colleagues here see no objection, I should say that a law of that kind would not be very objectionable. But then you would have the trouble of arranging divisions; you would have to require them to make satisfactory divisions.

Mr. RICHARDSON. What do you mean by "divisions"?

Mr. EVANS. I mean divisions of the through rate.

Mr. RICHARDSON. That is what I supposed.

Mr. EVANS. You could require the Chicago, Burlington and Quincy Railroad to exchange business with the Kansas City Southern at Kansas City; and yet if you did not have the power to tell the Chicago, Burlington and Quincy that it must allow the Kansas City Southern so many cents per hundred, you would be doing an actual injustice to the Kansas City Southern.

Mr. RICHARDSON. Do you not think the shipper would be greatly benefited, if he desired to make a through shipment to a certain destination where the freight passed over one of these roads that was not allowed to do business and did not have any through or joint freight rates with initial carrier, if he were allowed to make that through rate and not have to stop and load and unload at a certain point? In other words, make the initial carrier carry his shipment to its destination under such division of rates as would be fair to each carrier.

Mr. EVANS. I think so; I am a believer in the opening of all good through routes.

Mr. ADAMSON. Do you not think every carrier engaged in interstate commerce ought to be a party to the through route?

Mr. EVANS. I think they ought to unless there are some local conditions which would actually forbid it. I believe the commerce of this country ought to be allowed to move freely without embarrassment either to carriers or shippers.

Mr. ADAMSON. That is the only way you can do it, is it not?

Mr. EVANS. Yes, sir. As I started to say to this gentleman [Mr. Richardson] here, you might arrange a free interchange of traffic by requiring the lines to publish rates with one another; but unless you arranged a satisfactory division between the Chicago, Burlington and Quincy and the Kansas City Southern the Kansas City Southern might be injured. They might be given only 2 cents per hundred as their proportion.

Mr. RICHARDSON. I understand; but would not a law requiring them to do business with each other be a good thing?

Mr. EVANS. Yes; but you would have to require them to do it on a remunerative basis. The through rate might be 20 cents per hundred, and you might think that the Kansas City Southern could not haul that business for less than 10 cents per hundred; but the Chicago, Burlington and Quincy, being the originator of the business, might not be willing to allow the Kansas City Southern more than 2 cents per hundred.

Mr. RICHARDSON. Would not all that be covered by the proposition that they must do business on the same basis?

Mr. EVANS. I hardly think that is feasible; because there might be lines which would deliver to the Kansas City Southern at points 200 or 300 miles south of Kansas City, shortening the haul of the Kansas City Southern from 200 miles to 25 miles; and I hardly think that any law could be enacted which would cover the question of divisions between carriers.

The CHAIRMAN. But that is the law now. We have a law enacted on the subject.

Mr. EVANS. Yes; you have.

The CHAIRMAN. We cover it by the law, whether we can or not. I think you will probably want to retract the statement that there is no way of covering it, because we have covered it.

Mr. LINCOLN. This bill gives the Interstate Commerce Commission the right, where roads can not agree upon divisions, to fix the division itself. That will overcome that difficulty.

Mr. RICHARDSON. That is true, but that provision does not cover all that we are talking about. If they can not agree upon rates where an exchange of business already exists, giving the commission power to make them agree does not authorize the commission to require common carriers to do business with all other carriers on same basis. As I understand, Mr. Lincoln, that refers to railroads that have joint rates established to a certain extent and can not agree upon the division. They do an exchange business with each other, and they send each other's cars from one track to the other, and it is only the "division" of rates that the present law refers to. But it does not refer to those independent lines that do not send cars from one track to the other, and vice versa.

Mr. TOWNSEND. But the bill provides for the establishment of through routes.

Mr. RICHARDSON. But you do not contend that the establishment of through routes would force a railroad to establish a route over a

line of railroad with which it had no joint traffic arrangement—no exchange of cars or business?

Mr. TOWNSEND. Oh, conditions might arise where the commission should do that.

Mr. ESCH. We have given them the authority.

The CHAIRMAN. That is the present law, where there is no such route existing.

Mr. STEVENS. It has been the law for two years and a half.

Mr. LINCOLN. Yes. The Kansas City Southern cases occurred in 1903, I think, Mr. Esch. You are about right—1903 or 1904. It was prior to the passage of the last amendment, when there was a question of the authority for making joint rates. That has been cleared up since.

Mr. EVANS. I must admit that I had overlooked that particular feature appearing on page 18, where it says, "and may prescribe the division of such rates."

Mr. ADAMSON. A good deal of that is already in the law.

The CHAIRMAN. You may proceed.

Mr. EVANS. I simply wanted to say that as a rule the larger shippers of the country have traffic men, and they can themselves take care of the question of routing. But the smaller manufacturers and dealers, located at local stations, are almost entirely at the mercy of the carriers on whose tracks they are located.

I want to add a word regarding traffic agreements. While I fully concur in all that Mr. Lincoln and the others have said, it occurs to me that there ought to be pretty close supervision by the Interstate Commerce Commission of the meetings of the traffic associations, if they are recognized legally.

The CHAIRMAN. What benefits will come to the shippers from legalizing these traffic association agreements?

Mr. EVANS. I think we have all derived a great deal of benefit from the discontinuance of individual tariffs, and the publication by joint agents, such as Mr. Leland at St. Louis. They publish the rates of the various lines in a less number of issues; and it is in the direction of uniformity, not only of rates, but of regulations.

The CHAIRMAN. Do you think it would greatly simplify the rate-making machine if they were permitted to enter into these traffic arrangements?

Mr. EVANS. I certainly do; yes, sir. For a number of years I was very much opposed to the legalizing of the traffic associations. But month by month, as I have noticed the improvement and the simplification of tariffs, I have become quite a convert to the belief that the traffic associations might be legalized to the advantage of the carriers and the shippers and receivers of freight.

Mr. STEVENS. Would it not centralize control and tend to destroy competition?

Mr. EVANS. I hardly think so, if the Interstate Commerce Commission exercised direct supervision.

The CHAIRMAN. In what way would it simplify the making of the tariff sheets? Each road is required to file its own tariff sheet with the Interstate Commerce Commission. They can not file one tariff sheet for a dozen roads going out of St. Louis.

Mr. EVANS. They authorize this agent of theirs to file the tariffs for them in a joint issue. The roads carry a much smaller number of individual issues now than they formerly did.

The CHAIRMAN. But the number of tariff sheets filed with the Interstate Commerce Commission has increased immensely in the last few years—not so much last year as it was the year before; but it was 250,000, I think, year before last, which was the largest number they ever had.

Mr. EVANS. I think that increased number is very largely due to the fact that they are cleaning up their old records and are issuing cancellations. They will issue an amendment, and it does not mean anything except possibly the clearing of the record. I believe that in the not far distant future you will see a lessening of the number of tariffs filed.

The CHAIRMAN. That is a belief perhaps founded on fact, and perhaps on hope. I hope we will. [Laughter.]

Mr. EVANS. I know of hundreds and hundreds of tariffs of the railroads which have been filed with a view of clearing their records, and making their records clear and uniform.

The CHAIRMAN. That was undoubtedly true for the year following the enactment of the Hepburn law.

Mr. EVANS. It is true now. This revision of tariffs is still going on; and if you will examine some of these issues you will find that a single issue by an agent results in the cancellation of sometimes dozens or a hundred individual issues.

The CHAIRMAN. That is true; and yet there may be another hundred changes made which do not cancel anything. There were 200,000 tariff sheets or amendments filed last year, and 250,000 the year before. A few years ago it was 100,000 or 150,000.

Mr. EVANS. Notwithstanding that fact the tariffs are becoming simpler and are becoming more uniform, and the shipper is thereby benefited. The shippers object, first of all, to this constant juggling of rates. We believe in stability of rates rather than low rates. We want reasonable rates; but we want especially stability of rates, so that if the rate from Chicago to Kansas City to-day is 30 cents we can feel reasonably sure that it is going to be the same forty-five days from now.

The CHAIRMAN. Do you believe it would be of any advantage if we should authorize either the Interstate Commerce Commission or somebody else to study the subject of arrangement and form of tariff sheets, with a view to a simplification of rate making and publication?

Mr. EVANS. I believe that your committee might greatly help in that work. The railroads are doing what they can, but sometimes it takes a third party to offer suggestions which amount to anything.

The CHAIRMAN. But you are a practical man, and know about these things. Do you think it would do any good for this committee (which is not composed of experts, either in tariff making or otherwise, as to the railroads) to study that subject?

Mr. EVANS. I do not know what your powers or prerogatives are, but I believe that if you could recommend or assist in that direction it would be very beneficial.

The CHAIRMAN. What I mean is this: Do you think a committee composed as this committee is (of gentlemen with some legislative experience, and some general knowledge of railroad matters through the hearings that we have) could, by an investigation, by calling railroad and other interests before us, learn enough to help in formulating some proposition that might simplify the business of rate and tariff making?

Mr. EVANS. Yes, sir; I believe that conferences of that kind are always beneficial, and I believe it would be a good move.

The CHAIRMAN. That is one of the great difficulties, is it not—the complications, the difficulties both to the shipper and the railroad company?

Mr. EVANS. Yes, sir; I realize that fully. After having handled tariffs for twenty-five years I would perhaps find it difficult to take some of these large issues and find a rate in them, because of the arrangement, or the notes and the exceptions. I might think it was a class rate, and I might overlook the fact that the traffic was covered by a commodity.

Mr. ESCH. What has the commission done under section 20 of the Hepburn Act toward simplifying the schedules?

Mr. EVANS. I do not know that I can answer that in full; but I know of their work by the results. I do not know of the detailed steps which they have taken; but I do know that they have ordered the cancellation of certain practices and regulations which they believed were capable of discrimination, and thereby they have secured uniformity. For years we have been fighting with the railroads over the question of car service. Recently the Interstate Commerce Commission recommended the adoption of the code of rules recommended by the National Association of Railway Commissioners. I believe that is going to very greatly decrease the friction between the carriers and shippers. In fact, I know of no one movement which is going to be so beneficial and result in so much harmony as that one act. We have had an awful time with the railroads over car service. The different associations have had different rules; and the collection of car-service bills was left very largely to the car-service managers. If they presented a bill for \$200, and you felt that you had extenuating circumstances, you might secure a compromise by showing the car-service manager that he was wrong in enforcing it. But the new rules are so clear that very few, if any, disputes of that kind will arise; and when a carrier prepares a car-service bill it will collect it, and the shippers will be willing to pay it. I think, referring to the chairman's suggestion, that this committee, with its great knowledge of railroad rules and regulations and practices, could work to great advantage along that line.

I am sure that you would have the cooperation of the shipping public, if you cared to have it, and the carriers as well.

Mr. KENNEDY. A moment since you said that the rates ought to be reasonable. Do you have anybody in your association, representing the man that lives at a noncompetitive point, to say what duty the railroad owes to the man living at a noncompetitive point as compared with rates that are given to competitive points?

Mr. EVANS. I think the railroads as a rule are disposed to take pretty good care of their local stations. I know that it is the policy of the Chicago, Milwaukee and St. Paul, and the Chicago and Northwestern, and the Santa Fe, to "protect" (as they call it) their local territory. I represent a number of factories that are located at local stations on different lines.

Mr. KENNEDY. What is your idea of the duty a railroad owes to the city that has no other means of transportation? Is it to give it as fair a rate as other points have?

Mr. EVANS. Certainly. I think that they should have just as good rates; they should be able to secure just as good a car supply; and they should be treated in every way equally well with the shipper who controls 5,000 cars per year.

Mr. ADAMSON. Do you know any idealistic place like that, where that has ever been put into practice?

Mr. EVANS. I do.

Mr. ADAMSON. Where is it?

Mr. EVANS. I know of a factory over at Kenosha, Wis.

Mr. ADAMSON. A factory?

Mr. EVANS. Yes.

Mr. ADAMSON. Oh, I understand that they all take care of the factories. I am talking about the treatment of folks the same at a place that has no other railroad as at a place where they have competition.

Mr. EVANS. There may be a few agents at local stations who are overworked and lack sleep, who are grouchy at times; but——

Mr. ADAMSON. I am not talking about how bad tempered they are; I am talking about the rates and accommodations they give the people where they do not have it to do.

Mr. HUBBARD. Why would not the case of the factory illustrate it?

Mr. ADAMSON. There is a general idea that they take care of the factories along their line.

Mr. HUBBARD. Factories are "folks," usually.

Mr. ADAMSON. No; they are generally owned by somebody else.

Mr. HUBBARD. I should like to have the witness repeat his statement about the factory.

Mr. EVANS. This factory was started a number of years ago at a local station, and it has grown to very large proportions. It makes a good grade of wagons, so that it sells them without any apparent effort. The manufacturers and jobbers are mighty glad to be able to handle the product of the Bayne Wagon Company. And yet, during all the period when the rates were fluctuating between Chicago and the Missouri River and the Colorado points and the Pacific coast points, the Chicago and Northwestern invariably put that Kenosha factory on just as good a basis as the International Harvester Company at Chicago; and it is doing it to-day. The Chicago, Milwaukee and St. Paul has dozens of furniture factories in Michigan and Wisconsin; and in the interest of those factories——

The CHAIRMAN. Not in Michigan.

Mr. EVANS. Possibly not in Michigan; I thought they had. But they have them in Wisconsin, in which they are so greatly interested that they are frequently publishing tariffs opening new routes for those factories. I know that.

Mr. KENNEDY. In that case the railroad has to help the factory do business in competition with others. It is interested in having that factory ship over its road.

Mr. EVANS. It is interested in building up that factory, because if the factory increases the number of its men from 1,000 to 4,000 the road has the transportation of the clothing and the boots and shoes and all the other articles which those 4,000 people require, as against the 1,000.

Mr. ADAMSON. If it goes down, the same work will be done on some other line, and the business will be originated there. That is the way they look at it; and they want to build up industries on their own line.

Mr. EVANS. It is to their interest, and why should they not do it?

Mr. KENNEDY. But do you now know of a factory that has to ship over that road anyway, where there is——

Mr. EVANS. I suppose you mean business originating at a local station which is going to a far-distant point like Denver, or competitive points—as to whether or not that local shipper could use the line?

Mr. KENNEDY. I had in mind this state of facts: There are Portland cement plants near New York City that wanted a rate, say, to Chicago. The domestic rate to Chicago a short time ago was 20 cents per hundred pounds. The rate made by the railroads from New York to Chicago on imported cement was 10 cents per hundred pounds. The making of that rate was justified because the roads wanted to compete with the traffic passing through New Orleans to Chicago.

Mr. EVANS. Yes, sir.

Mr. KENNEDY. Instead of reducing the domestic rate and compelling the railroad to assist the American cement factory on its line, the railroad maintained a domestic rate of 20 cents a hundred pounds in order to compete with New Orleans to Chicago for that cement trade, and held the domestic rate at 20 cents a hundred pounds because it got the traffic from the American factory anyway. What do you think of that practice?

Mr. EVANS. It seems to me that shipper had recourse through the Interstate Commerce Commission on his domestic rate.

Mr. KENNEDY. No; the Cleveland Plate Glass Company had just such a case, and the Supreme Court held that the Hepburn bill gave no right to the Interstate Commerce Commission to declare the import trade on plate glass unreasonable and discriminatory, because domestic shipments were under different circumstances and conditions than import shipments.

Mr. EVANS. I was working under those same conditions for the Great Northern Railway at St. Louis. I was taking tobacco shipments and cigarettes in cases from St. Louis to points in India, Calcutta, Straits Settlements, Java, and Australia at \$2.10 per hundred through the port of Seattle, and we were charging on business consumed at Seattle \$3.60 per hundred.

The CHAIRMAN. Do you think that is fair?

Mr. EVANS. Well, I am not prepared to——

Mr. STEVENS. If you had not made that rate you could not have done that business, could you?

Mr. EVANS. We could not; no, sir.

Mr. ADAMSON. I am not versed in the exact details of the rates; but while I do not know of any complaints of factories not being taken care of by the railroads on the lines on which they are located, still at the very towns where the factories are taken care of and make no complaints the people kick because they are bottled up; there is no competition there, and the other business does not get competition.

Mr. HUBBARD. How did that \$3 rate to Seattle compare with the rate on goods of a like class to the same point?

Mr. EVANS. That was the regular first-class rate. The first-class rate from St. Louis to Seattle was \$3.60; but these shipments for the Orient, or for the South Sea Islands, were handled on a special export tariff.

MR. HUBBARD. On account of the foreign rate?

MR. EVANS. Meeting competition from England and India and other points.

MR. KENNEDY. What class of goods was shipped?

MR. EVANS. Cigarettes and tobacco. Since then the American Tobacco Company have established cigarette factories at Shanghai and Hongkong; and they are manufacturing cigarettes themselves over there now.

MR. SIMS. Was that rate made in order to enable these cigarette manufacturers to unload their surplus in foreign countries?

MR. EVANS. No; the oriental traffic was more profitable than the domestic trade, and it helped them to keep their factories going at a time when the domestic consumption might fall off.

MR. SIMS. If there was more profit in it than in the domestic consumption, why could they not pay an equal rate of freight?

MR. EVANS. That is the point; they claimed they could not.

MR. KENNEDY. Do you think the railroads ought to pay a subsidy to carry goods to foreign lands so that they can be sold cheaper there, in order that the price may be maintained here on the part of the product that is left in this country?

MR. EVANS. I hope you will excuse me from going into a discussion on that subject. I am not a competent witness on that line.

MR. ESCH. Under the plate-glass decision, then, the railroad company, by shipping an imported article to an interior point at a less rate than the domestic article, would be able to neutralize the effect, if not in fact to destroy the benefits, of the protective tariff?

MR. EVANS. Yes; that is probably true. If the rate from this factory point to Chicago was 20 cents, I am rather inclined to think that the import rate from New York to Chicago should be 20 cents. I may be mistaken; but that would be my view, without any great consideration of the subject.

MR. ESCH. Another question: You stated that you thought that factories at interior points should be given the same advantages and the same treatment as those at competitive points. If that be true, do you not deprive such points of their natural advantages?

MR. EVANS. You mean that a point like Chicago would have an advantage over Kenosha, a local point?

MR. ESCH. Yes; and are not the cities now clamoring for the benefit which their natural advantages give them?

MR. EVANS. I can not help thinking that a city ought to be given the benefit of its geographical location; but there are other conditions which ought to be taken into consideration. The cost of labor and the rents are cheaper in Kenosha; and they have a great many advantages which the people in Chicago do not have.

MR. ADAMSON. When you go to consider the rates between a town which appears to have natural advantages and one more unfortunately situated in the interior, do you not think the differential in the freight rate is sometimes made too great? Do you not think the cost of loading and handling and unloading, which is incident to all traffic, ought to start the gradation a little higher, and then that the intermediate differentials ought to be made smaller, so that the difference would not be so great between the different cities?

MR. EVANS. I know of cases where I believe the scaling is not rapid enough.

Mr. ADAMSON. Do you not think it is too rapid in very many cases—that the difference is too great?

Mr. EVANS. In some cases, I think so; yes. I have known such cases. I know that the rates from Chicago and the Missouri River carry out sometimes within 100 miles of the Missouri River, and pay the same rate to a point 100 miles this side of the Missouri River as we do to Missouri River points. They carry that high rate clear through.

Mr. ADAMSON. It ought to be just a fraction smaller?

Mr. EVANS. It ought to be graded up from Chicago part way on a sort of a mileage basis. But those things are best worked out by the traffic officials themselves.

Mr. SIMS. Let me ask you a question on the general subject. If the Government appropriates money to clean out rivers and harbors, and creates thereby additional competition for the railroads, and forces the railroads to reduce their rates at these competitive points perceptibly, followed by the natural result of either maintaining high rates or increasing them on noncompetitive points, is not that discriminating between the people of the United States who pay the taxes in order to improve these rivers and harbors?

Mr. EVANS. I do not know of any river competition which amounts to very much in these days.

Mr. SIMS. But we are trying to make it amount to something by a vast system of inland-waterway improvement.

Mr. EVANS. I have tried at different times to use the Illinois River from Peoria to St. Louis. Five or six years ago, when they put on a new line of boats, they were in a position to handle traffic, and I tried to get the boat lines to give me a rate. If we shipped via rail, we could load at the factory and have the cars switched down and switched to our branch house in St. Louis; whereas if we shipped via steamer we had to haul our freight down by teams, load it on the steamer, and when it got to St. Louis we had to haul it from the wharf to our warehouse.

Mr. SIMS. If the railroads have to take goods at competitive points at less than a profitable rate, does not that require them to have more than a profitable rate at noncompetitive points, in order to get earnings on their investment?

Mr. EVANS. I imagine that is the fact; yes, sir.

A MEMBER. Do you know of any such cases?

Mr. EVANS. I believe there are some commodities which are possibly carried at pretty close to or below the actual cost of transportation, such as soft coal, and possibly sand, and a few other commodities.

The CHAIRMAN. Is that all of your testimony?

Mr. EVANS. Yes, sir.

The CHAIRMAN. We are very much obliged to you, indeed.

STATEMENT OF MR. H. G. WILSON, OF KANSAS CITY, MO.

Mr. WILSON. I am transportation commissioner of the Commercial Club, at Kansas City. I am going to address myself particularly, gentlemen, to two points, both of which have been covered very comprehensively; but I feel that I have some new points to present in both. One is the right to route freight, and the other is rate quotations.

The right to route freight has been very carefully and very generally covered by this discussion. I want to say, with respect to the shipper's property right in this right to route, and aside from that, that there is an additional interest, and that is the way in which giving the shipper the right to route bears on rate legislation. I do not mean by that the enactment of laws by the States or the nation, but the acts of the railroads themselves in providing rates, rules, and regulations for the transportation of property. The intermediate carrier particularly is frequently among what is termed the "weaker lines." Every line of railroad exerts a certain specific influence with respect to railroad-rate legislation in the way I have explained. The inability of the shipper to designate the route, and favor, perhaps, the intermediate or weaker lines with some of his business, has a tendency to withdraw the interest of that railroad from undertaking to satisfy the requirements of the shipper with respect to rates, rules, or regulations that he may desire. This results in the preponderance or domination of the influence of the stronger lines, and tends to monopolistic practices and what would result in an effective pooling of tonnage. You will readily recognize that if only the initial line (which, in a large percentage of the cases, is the strong trunk line) controlled the routing of traffic to which the intermediate or weaker line must of necessity look for its traffic, the result would soon be that rate legislation and the establishment of rules and regulations for the transportation of property would be almost entirely in the hands of the dominating lines, because of the fact that the weaker lines would of necessity have to look to those dominating lines for any reasonable share of patronage. On the other hand, if the control of routing is in the hands of the shipper, the weak line is in a more or less independent position, because it can secure its reasonable proportion of tonnage from the owners of the property.

We also believe that the right of the shipper to route freight enters into and becomes a part of the great question of public policy about which a great deal has been said at this hearing—that public policy might require that the routing be left in the hands of the initial line or in the hands of the railroads. I think that that very public policy is partly made up by this shipper's or owner's property-right in the property.

A great deal has also been said about the disastrous results in the handling of perishable property that might follow from placing this right to route in the hands of the shipper. I think the provisions of the act as drawn, providing for proper supervision by the Interstate Commerce Commission, as well as the necessities of the traffic itself, would serve to protect the public interests against a danger of that sort.

It has also been suggested that perhaps the right to route freight might be used in various ways in the nature of a rebate. I think it is only reasonable and fair to admit that that might be the case, and that there is quite an element of danger with respect to that. But I feel that the element of danger is small compared to the public good that would result from giving the shipper the right to route which is inherent in the property, and of which he should not be deprived. There is nothing to prevent the making of laws against the commission of acts; but even with such laws enacted, those acts are committed. We find that every day. So I do not feel

that we need apprehend any unusual or insurmountable trouble or difficulty from establishing unqualifiedly this right of the shipper to route, with the Interstate Commerce Commission restriction and supervision as provided in the amendment. With respect to that, I agree with everything that has been presented on behalf of the Traffic League by Mr. Lincoln, of which league I am a member.

On the question of rate quotations I am an "insurgent;" I do not agree with the National Industrial Traffic League. I do not agree that the regulation they are advocating is sufficient. I do not agree that it accomplishes what the league itself seeks to accomplish. I think we should look over the situation and see what the conditions were prior to the present situation, and what we are trying to correct. It is this:

Prior to the enactment of the Hepburn amendment to the commerce act it was not only the practice and the custom, but it was a recognized right of long standing, that the shipper should request rate quotations, and that rates were quoted. Rates were quoted in writing, and rates were quoted verbally; contracts were made by the railroads; and there was nothing whatever in the nature of rebates, but simply open and above-board transactions—transactions open to the entire public; and those rates were almost invariably protected. As a matter of fact, speaking from a long experience of railroad service and my few years' experience in commercial life, I can not at the moment think of a single instance where rates quoted by railroads in good faith, and contracts made thereon, were not carried out absolutely. We built up a custom whereby the public became accustomed to depend upon the railroads and their representatives for the rate information necessary in the conduct of the business of the individual, the merchant, or the manufacturer. Since the passage of the Hepburn Act—I say "since that time;" perhaps not because of the passage of that act, but since that time——

THE CHAIRMAN. Since the passage of the Elkins Act, you mean, do you not?

MR. WILSON. Yes, sir. What I have in mind particularly is the aggressive and effective enforcement of the act itself, which has been more apparent since 1906 than prior thereto. That is what I mean. Since that time it has been ascertained by the railroads, perhaps, and latterly by the public, that it is the duty of the public to know what these rates are. As it has been very aptly expressed on the Missouri River, it is our business (the business of the shipper) to know absolutely what the rate is. It does not make any difference to the railroad what the rate is, because it can bill or it can quote or it can issue a bill of lading at any rate; and its only interest is, when the property gets to the destination, to see that the legal rate is collected—and it generally sees to that.

I have in mind numerous instances where railroads have been asked for rate quotations, and rates have been quoted (in good faith, mind you) by the railroad representatives; but they were rates at variance with the tariff. They were less than the legal rate—not intentionally, but because of the fact that the rate they did quote was perhaps in effect by some other route. Shipments would be sold and trade transactions made on that basis, and the business shipped. But the bill of lading, mind you, was issued at the quoted rate via this particular line of railroad, and the traffic was carried to destination, but the legal

rate was collected; and the legal rate was collected via the route via which the shipment traveled, entailing a loss to the shipper as between the quoted rate and the legal rate of several cents per hundred pounds. I have in mind at the moment one particular case of 6 cents per hundred pounds on a shipment of 10 cars of wheat, amounting to something over 1,000 or 1,200 bushels in each car. The matter was even referred to the Interstate Commerce Commission. The rate quoted was in effect via other lines. The business moved by the line which specifically solicited the business and quoted the particular rate, yet when the shipment was made it was found that the rate amounted to 6 cents per hundred higher via that line, because that particular rate did not apply via that line, and the agent that quoted the rate did not know it. Those are some of the reasons why it has become necessary for the shipper to know absolutely what the rate is; and it does not make any difference to the railroad.

As a matter of fact—and this reference was made by one of the gentlemen who appeared here a day or two ago—the general officers of one of the railroads notified by circular letter its agents in the country throughout the territory west of the Missouri River that they should under no circumstances quote rates or insert rates in the bills of lading; that requests for quotations should be referred to the general office, and that no rates should be inserted in bills of lading. When the matter was taken up with the officer, he said: "What is the reason? Why should we do it? We will quote you rates as we can, and we will try to quote them right. We will not insert rates in bills of lading, because they are not worth anything when they are there. There is no obligation on our part to protect them." As a matter of fact, under the old conditions a quoted rate had all the effect of an absolute contract, and was protected and observed as such. Under the present conditions a quotation is not worth a snap of the finger.

The National Industrial Traffic League started out to do this thing, and I was an earnest advocate of it; and I am still convinced of the necessity for it. I refer to the correct quotation of rates by railroads. I do not care whether you make it a quotation in writing, or in what shape it is put. I believe that the carrier should be obliged to quote the correct rate. I believe the carrier should be made to know what the rate is, just as much as I (the shipper) must know what the rate is. I think that if I ask the carrier for a rate precedent to a business transaction, and it quotes me a rate, and I make a sale based on that rate and ship my goods, and am then forced to pay a higher rate than that via that line, the line so quoting should make good to me my loss—the loss in that case being the difference between the quoted rate and the legal rate collected.

I recognize the fact that immediately some one will say that that opens the door for great manipulations and that to enact a law of that kind would immediately make nugatory all of this other preceding enactment with respect to the regulation of commerce, which has sought to do away and is doing away with the secret practices of rebating, etc. But I believe that it is in the power of Congress to so surround a provision of that kind with protection as to prevent this manipulation or this opportunity to manipulate. And this suggestion was made, which perhaps may not be new to some of you—certainly it is not to me, because I have talked it until I am almost

black in the face: That where a carrier misquotes a rate on which there has been a business transaction of the kind I have mentioned, and there is a loss by the shipper of the difference between the quoted and the legal rate, the carrier must not only make good the loss to the shipper, but the same action by which he is forced to make good the loss to the shipper should at the same time make it necessary for him to pay into the Treasury of the United States Government his entire freight earnings or passenger earnings (depending on what the property was in the particular transaction). In other words, I would make the punishment fit the crime.

Mr. TOWNSEND. Is not that going a good deal further than the crime merits if it was an honest mistake made by the railroad agent?

Mr. WILSON. Mr. Congressman, there can not be any such thing as an honest mistake.

Mr. TOWNSEND. I thought you had been talking about that.

Mr. WILSON. I spoke of mistakes made unintentionally, without any intention to quote a rate less than the tariff rate, merely in an effort to secure business, and as against a legal rate that might be quoted by a competitor.

The CHAIRMAN. Does your proposition contemplate that there should be no adjustment in such cases without suit being brought?

Mr. WILSON. No, sir; I do not propose to do that. I feel that it should be done either through the medium of the Interstate Commerce Commission or such other body as might be determined by the committee or by the powers that be.

The CHAIRMAN. Do you mean a petition filed with the Interstate Commerce Commission? In other words, does your proposition contemplate that the shipper and the railroads will never get together themselves?

Mr. WILSON. No, sir; they may not do that. I would not agree to that. I think there should be a third party between them. In order that publicity may always be obtained, that the records may be open to the public, and to insure a nonrebating proposition, I would surround the proposition with all the care possible.

The Townsend bill that we have before us provides for a fine of \$250. If you will undertake to follow out a transaction involving a large amount of traffic, you will see that if it were possible for a rate to be quoted at less than the legal rate for the purpose of securing to a given line the traffic, and to benefit a particular shipper, whose profits would be large, the earnings of the railroad would be large; and a fine of \$250, even if they were caught at the transaction, would be absolutely infinitesimal. It would not stop any one from doing that if he were disposed to do it.

Mr. ADAMSON. Do you not think that with the forfeiture to the Government provided in the bill, you ought to rest satisfied with your existing legal remedy against the party, if he has done you a legal wrong, in the courts?

Mr. WILSON. I have not found, sir, that I have any existing legal remedy in a case of this kind.

Mr. ADAMSON. Did you read the Post this morning?

Mr. WILSON. No, sir; I started to do so.

Mr. ADAMSON. The announcement there that the regulars and insurgents had "made friends" ought to put you out of business here, ought it not? [Laughter.]

Mr. WILSON. I did think of that, but I did not think it applied to me.

The CHAIRMAN. If you will read the Post to-morrow morning, I think you will find that denied.

Mr. WILSON. I expect so; yes, sir.

Mr. HUBBARD. Have you finished your statement, Mr. Wilson?

Mr. WILSON. In the main; yes, sir.

Mr. HUBBARD. I want to call your attention to two or three questions, the first of which is this:

If the shippers were given control of routing, would it or not have a tendency in the long run to increase the rates the railroads would have and ought to have?

Mr. WILSON. I think not, sir. I think the reverse would be true.

Mr. HUBBARD. Why?

Mr. WILSON. Because of the shipper's control of his traffic and the inability of the railroad to say to the shipper: "You have got to ship this stuff our way, regardless of how you may want to ship it; and therefore we can control the rate."

Mr. HUBBARD. That assumes, does it not, that the carriers would be prevented from using that route which for them is cheaper and better? And in that case would not the carriers in the long run get some compensatory advantage, by rates or otherwise?

Mr. WILSON. I will say, Mr. Hubbard, that it would not deprive the carrier of using the route that is most economical to him, for this reason: This is a condition where a rate applies via two or more routes. All of these various routes have been selected by the initial carrier. The public has had nothing whatever to do with it. In the choice of these various routes the initial carrier has presumably taken into consideration all of the conditions surrounding the question of economics to him in the handling of the property; and I, as the shipper, or the public, have the right to assume that he has equalized to himself all of those conditions. Therefore, in publishing, as he does, the rate via various routes, he scatters broadcast the notice to the public that "You may select either of these routes and it is satisfactory to me, because I have fixed my division and my earnings accordingly."

Mr. HUBBARD. But those conditions may change, may they not—as, for example, by the ability or the want of ability of a given connecting line to supply empties in return for the cars it gets from the initial line? And in that case is not the carrier the best judge of what route is more economical for it?

Mr. WILSON. The carrier is always the best judge as to what route or as to what thing is the most economical for it.

Mr. HUBBARD. I understood you to announce the other doctrine.

Mr. WILSON. No, sir. I do not think that follows, if you will study what I said.

Mr. HUBBARD. I shall be glad to do so. Then, if the carrier is, under conditions of that sort, the best judge of what route is more economical for it—if, in other words, it knows that a certain connecting route will enable it to handle its business cheaper and better, and you deprive it of that privilege—is it not pretty sure that the tendency will be that the railroad will and ought to be able to make itself whole, by increasing rates or otherwise, in the long run?

Mr. WILSON. You did not permit me to finish my reply to the first part of your question.

Mr. HUBBARD. I beg your pardon.

Mr. WILSON. I was going on to say that this condition by which some connecting carrier might subsequently become unable to furnish cars is one of the conditions which the initial carrier must of necessity have taken into consideration at the time it established that route.

Mr. HUBBARD. Just there, if that is so, will not the tendency be at the outset to increase the rate the carrier will name?

Mr. WILSON. That is always the tendency of the carrier, Mr. Hubbard. I do not say that with any—

Mr. HUBBARD. I do not mean merely its wish, its interest; but, under the law of compensation, will not that necessarily come about?

Mr. WILSON. No, sir; I do not believe it will, except that the carrier is always desirous of getting its maximum earnings on all traffic. The carrier has the right to advance its earnings on any traffic, provided always that the rates established under an advance are reasonable rates; and that reasonableness is always to be determined by a commission or by the courts.

Mr. HUBBARD. If, by legislation, the carrier is to a certain extent deprived of the power to conduct its business as it pleases with respect to routing, will not the tendency be for it to exercise the right it has to increase its charges?

Mr. WILSON. Always, I think.

Mr. HUBBARD. I want to sum the matter up in a question something like this: Can not the carrier afford to transport freight cheaper, and, generally speaking, to make lower rates, if it is given control of the routing?

Mr. WILSON. The only answer I can make to that question is a broad one; and that is this: If you permit the carrier to conduct its semipublic function on its own terms and under its own conditions, then it can make its own price.

Mr. HUBBARD. You would agree that the carrier ought to have a reasonable compensation?

Mr. WILSON. I always agree to that.

Mr. HUBBARD. Ought not that reasonable compensation to be larger if you impose an additional burden on it at some point?

Mr. WILSON. I do not agree to that.

Mr. HUBBARD. That is all.

EXPRESS FRANKS.

The CHAIRMAN. Mr. Adamson has a letter from the general counsel of the Southern Express Company, in regard to the bill relative to the granting of express franks, which may be inserted in the record.

(The paper above referred to is as follows:)

SOUTHERN EXPRESS COMPANY,
Atlanta, Ga., January 31, 1910.

Hon. W. C. ADAMSON,
Member of Congress, Washington, D. C.

DEAR JUDGE ADAMS: I wrote you last fall in reference to a proposed bill which I thought then would be introduced in Congress, which had for its purpose the putting of express companies upon an equal basis with railroad companies as to issuing of franks to its own officers and employees and officers and employees of other common carriers. You were kind enough at that time to undertake to give full consideration to the subject and to invite further communication. I understand that the bill has been introduced

and that there has been a hearing before your committee. I hope very much that you will be able to give this your favorable vote. You know, of course, that express companies were placed in the Hepburn bill after that bill had been framed. They were put in by extending the meaning of the words "common carrier." At that time the bill had been adjusted in so far as free transportation is concerned of railroads. It was subsequently discovered that the adjustment of the bill in this particular was inapt as to express companies. The Supreme Court of the United States finally passed upon the subject in *Adams Express Co. v. United States* (212 U. S., 535), and with which I am sure you are familiar. The last sentence of that opinion is as follows:

"It is very likely that there is no substantial reason why Congress should not extend to express companies, their officers, agents, and employees corresponding privileges for free carriage of goods with those which are given to the officers, agents, and employees of railroad companies in respect to transportation of persons, but—if the law is defective in this respect—the remedy must be applied by Congress and not by the courts."

It does not seem to us to be hurtful to permit the Southern Express Company to carry a parcel for its president from one point to another in interstate commerce. It can not at this time carry such a parcel for its president or any other officer or employee. Nor does it seem to us to be hurtful to exchange that kind of transportation with railroad employees. The personal packages carried are not of sufficient moment to become a factor for competitive business. For instance, one use that I liked to make of my frank was that when I went away on a trip to send back on my frank my soiled clothes. I think that fact did not enter into any commercial competition. Sometimes the frank has a more general use, but this use is guarded very closely by the company, and the franks are in terms and by practice restricted to personal packages.

The bill as introduced has another scope—that is, legalizing certain features of the contracts between express companies and railroad companies. Express companies in their contracts with railroads have stipulated that the railroads should carry free or at reduced rates, as a part of the consideration of the contract, men and material to be used by the express companies in business, and the express companies have in turn entered into corresponding obligations with the railroad companies. The Interstate Commerce Commission passed on these matters in an opinion reported under the style of *In the Matter of Contracts of Express Companies for Free Transportation of Their Men and Material over Railroads* (16 I. C. C., 246), the headnotes of which are as follows:

"1. A railway company may lawfully transport the men and supplies of an express company without reference to any tariff provision when employed or used in the business of the express company upon the line of the railway itself, and in the same manner an express company may lawfully transport the packages of a railway company between points upon that line of railway without reference to its tariff.

"2. A railway company may not lawfully transport men and supplies of an express company when employed or used in the business of that company at points not on the line of railway, and an express company may not lawfully transport for a railway packages between points on its route but not on that particular line of railway."

Inasmuch as these contracts are required to be filed with the Interstate Commerce Commission and are actually so filed, and the transportation done under them by the railroads for the express companies and the express companies for the railroads is not a question of a competitive nature, we think that filing and posting of those with the commission ought to be a sufficient filing and posting to meet the requirements of the law.

If there be any matters which further correspondence can clear up, may I invite it with the hope of gaining your influence for this bill?

With kindest regards, I am, sincerely, yours,

ROBT. C. ALSTON.

(The committee thereupon took a recess until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the committee resumed its session.

Mr. STEVENS. Mr. Wilson, are you ready to proceed?

Mr. WILSON. Mr. Lincoln wishes to make a statement.

ADDITIONAL STATEMENT OF MR. J. C. LINCOLN.

Mr. LINCOLN. I merely wish to get into the record the memorandum which I was requested to prepare yesterday, and which is as follows:

Resolutions favoring amendments to the interstate-commerce act of the following import: Giving to the Interstate Commerce Commission the power to suspend proposed advances in rates, etc.; giving to shipper right to route freight; requiring common carriers upon demand to quote rates in writing have been adopted by the following organizations, and copy thereof is filed with committee for reference: Western Fruit Jobbers' Association; Transportation Bureau of the Seattle (Wash.) Chamber of Commerce; Nebraska State Association of Commercial Clubs; Commercial Club of Cedar Rapids, Iowa; Jobbers and Manufacturers, of Fort Dodge, Iowa; Toledo (Ohio) Produce Exchange; Indianapolis (Ind.) Commercial Club; Commercial Club of Omaha, Nebr.; Manufacturers and Shippers' Association of Rockford, Ill.; Southern Illinois Millers' Association; Quincy Freight Bureau; Manufacturers' Club of Buffalo; Omaha Grain Exchange; Indianapolis Freight Bureau; Missouri Manufacturers' Association; Fort Worth Freight Bureau.

Mr. LINCOLN. I believe you wanted that statement in the record, and then you wanted all of the resolutions not to go into the printed proceedings, but to be filed with the committee.

Mr. STEVENS. Yes.

STATEMENT OF MR. H. G. WILSON—Continued.

Mr. ADAMSON. When the committee took its recess I had the floor to ask you a question.

Mr. WILSON. Yes, sir.

Mr. ADAMSON. This is a matter of information that I would like to have, really and in earnest. If a shipper secures promptness in the transportation and delivery of his goods and secures safety and gets the lowest rate, what else would prompt him to insist on the right to route, beyond the reason assigned here by some gentlemen the other day that he might want to return a favor to some railroad that dealt with him.

Mr. WILSON. Among the several things that might influence his desire to control the routing of the traffic would be the fact that with certain classes of commodities there is a necessity for stopping in transit to partly unload or to complete loading. That would necessitate the routing of the shipment via a specific line——

Mr. ADAMSON. In what instance?

Mr. WILSON (continuing). By which, perhaps, the initial carrier might not want to forward the goods.

Mr. ADAMSON. To stop in transit to complete loading. What does that mean—that he would finish getting up his load on the road?

Mr. WILSON. Yes, sir. There are provisions in the regularly published tariffs now by which a car started at one point may be stopped at one or two other points to complete the loading.

Mr. ADAMSON. And you insist that you should have the right of passing it beyond the initial carrier and of routing it by another road in order to finish the loading on another road.

Mr. WILSON. That would hardly occur in the completion of the loading; but the other end of that is the same class of rule by which the shipment is stopped at a given point to partly unload and then the balance of the load is moved on to the final destination.

Mr. ADAMSON. That would in a way, then, be the termination of that much of the freight?

Mr. WILSON. Not so far as the rate is concerned.

Mr. ADAMSON. I understand; but the termination of that part of the freight.

Mr. WILSON. Of a part of the contents; yes, sir. Another thing, aside from the desire to return a favor would be the desire to influence rate legislation, as I mentioned earlier in the day. That is, the railroad enactment of rates, rules, and regulations.

Mr. ADAMSON. It might bring down the rate on some other competing route.

Mr. WILSON. Or to establish a necessary rate on an article of commerce on which the rate might be too high, or on which there might be some illustrative regulative measures, or various reasons along the same line.

Mr. ADAMSON. I would just like to know exactly what are the real substantial interests the shipper has at stake that would demand his right to route beyond those that have been stated.

Mr. WILSON. We think, first and above all else, that the right to control the routing of property over lines via which the rates are published is a property right that belongs to us. It does not belong to the railroad, and never did.

Mr. STEVENS. On what basis do you claim it is a property right?

Mr. WILSON. It is the property right in the property itself. It is our goods. We have made the sale of it. We undertake to deliver it at its destination, and sometimes it is necessary in the conduct of our business to move it via certain routes. For instance, the choosing of the particular terminal line where an industry is located along the terminal line, at destination, would influence the routing of traffic and would influence the sale.

Mr. STEVENS. I supposed that you were using the term "property right" as a colloquial phrase. I did not suppose you were serious in claiming it as a property right.

Mr. WILSON. I think we are.

Mr. ADAMSON. The property is yours, but when you carry it and deliver it to the railroad it becomes the bailee for a particular purpose, and you have to make a contract with him, or the law has to regulate how he will perform his duty to you in regard to that property. What we are considering is not the abstract proposition about what your property rights may be, but the relationship between you and the railroads which take charge of your property and transport it for you. It is a practical question to know just wherein your interests are affected if they discharge their duty to you by transmitting your freight at the cheapest rate, in safety, and with due courtesy and due promptness.

Mr. WILSON. A good deal of traffic is moved as an assembling proposition. It has to go into the construction of other articles of commerce which are subsequently forwarded from the original destination. The rates and conditions under which that property may be moved beyond the point of first destination to an ultimate destination are frequently dependent upon the arrival of that property at the first destination via certain lines. As was illustrated quite recently before the Interstate Commerce Commission at a hearing here with respect to the substitution of tonnage in transit, it was

shown that at a point up in Ohio goods must be received via a certain line, and not only via a certain line of railroad, but via a certain branch of that line, in order to get the effect of a certain rate to destinations beyond that point. In that case the buyer located at the first destination must necessarily specify the routing that he desired on that property.

Mr. ADAMSON. Every instance you have stated to me, including that last one, is an exceptional case where the load or the cargo, or whatever you call it, was not made up, and was not all to go through complete, and they involve other questions besides the bare one of taking your carload of goods.

Mr. WILSON. Not all of those, sir. The one with respect to the terminal delivery does not involve further shipment of the property.

Mr. ADAMSON. You say that you partly unload and then go on farther.

Mr. WILSON. That is one proposition. The other was as to the delivery at destination, the location of the industry on a particular line at destination, as an illustration.

Mr. ADAMSON. And the third one was why you collected it from different routes at a given point and then sent it on.

Mr. WILSON. That is one. The delivery is best illustrated, perhaps, by this condition. I will cite Kansas City because I am familiar with that. At Kansas City there is a belt line known as the Kansas City Belt Railway. It is owned by certain lines. Certain of those lines treat the Kansas City Belt Railway as their own terminals, and make deliveries to industries on those tracks without additional switching cost over and above the freight rate. A shipment coming from a point in the east might be designated by the purchaser to route via the Chicago, Milwaukee and St. Paul Railroad, because the purchaser knows that the St. Paul Railroad, running on the Kansas City Belt Railway, has its own terminal, and will make delivery without additional cost. The Chicago Great Western Railroad might be the carrier chosen by the initial line for routing west to Kansas City, and it could not make that delivery to the point on the Kansas City Belt Railway without additional cost. Sometimes that cost is charged to the shipper, and sometimes it is charged to the carrier.

Mr. ADAMSON. In that instance it would be to your interest to exercise the election in the matter.

Mr. WILSON. Yes, sir.

Mr. ADAMSON. Do those local and exceptional cases occur frequently?

Mr. WILSON. Yes, sir; quite frequently. They are matters of daily occurrence; and some matter of that nature, influencing the routing of the goods, occurs on a very large percentage of the traffic moved.

Mr. ESCH. Do you think the right of reconsignment is a valuable right which the shipper should retain?

Mr. WILSON. I think so.

Mr. ESCH. Would you make any exception with reference to the shipment of perishable freight?

Mr. WILSON. With respect to the routing?

Mr. ESCH. Yes, sir.

Mr. WILSON. I would make no exceptions further than is provided in the Townsend bill as to the control of that by the commission.

Mr. ESCH. You think the provisions of that section are sufficiently flexible to meet the emergencies as they arise?

Mr. WILSON. I believe so.

Mr. STEVENS. If it is a property right, as you claim—and you gentlemen seem tenacious of that term—why should not the men who ship strawberries have the same right to their property that you have?

Mr. WILSON. They undoubtedly should have.

Mr. STEVENS. What is the use of putting anything in the bill that is exceptional, then.

Mr. WILSON. A word about that strawberry proposition. I happen to be somewhat familiar with that particular condition, because I was connected with that particular railway—the Frisco—and I know it to be a fact that subsequent to 1901 the Frisco were enabled to procure cars, not from common carriers but from car companies, to move their strawberry traffic regardless of routing. They were under no obligations to any connecting carrier for that equipment. That was also true at least during two seasons of the peach crop in Georgia, on the Central of Georgia Railroad, and that is true to a large extent in the California fruit traffic. The equipment for those three particular classes of traffic is generally furnished by car-owning companies, as, for instance, a certain class of equipment for the transportation of live stock is furnished by car-owning companies. Those cars are free to move over any line in any direction and without respect to the line that may perhaps have brought those cars there, because they are sent there on the order generally of associations which require a certain number of cars to move their crop. Those cars are free to travel in any direction, over any line, under a fixed condition as to remuneration or compensation for the services of those cars. So that the fruit grower, the strawberry raiser, or the peach producer is not at the mercy of the railroad in this respect. He has his associations. He makes his arrangements generally with regard to equipment, and he is free to use that equipment in any direction, under stipulated terms and conditions.

Mr. ESCH. Where these car companies, like the Dispatch Line and the Armour Line, load their own cars, have they ever been interfered with by the carrier as to the routing of their freight?

Mr. WILSON. Are you speaking of those lines alone, or of that class of lines?

Mr. ESCH. That class of lines.

Mr. WILSON. Speaking of that class of lines, I would say yes, they have. There is a certain refrigerator line which is, I believe, an independent corporation. Its ownership is generally controlled by one of the large systems. There have been times in the past when those systems undertook to and I believe did to a great extent control the movement of those cars. I would not say that, however, of the Armour car lines, because I believe the Armour car lines control their equipment; and it was particularly with respect to the Armour car lines that I referred to this strawberry business and this Georgia peach crop.

Mr. STEVENS. The testimony that I cited yesterday is contained in the records of the committee, and was given before us by both shippers and railroads. My statement is based upon that.

Mr. WILSON. It was no doubt correct at one time.

Mr. STEVENS. If it be true, as you seem to claim, that there is a property right in the owner of the freight, how can you reconcile that with the provision in this bill that in certain cases the Interstate Commerce Commission shall have the right to take your property rights away from you without due process of law?

Mr. WILSON. I presume that that provision is put in there particularly to provide the commission with power, taking into consideration conditions with respect to particular——

Mr. STEVENS. What right have they to take away your property at any time, taking anything into consideration.

Mr. WILSON. We are conceding that the best interests of the public require that at certain times and under certain conditions and for the public good it is necessary, or it may become necessary, to establish certain regulations; and we assume that the Interstate Commerce Commission, being an impartial body, would establish such rules or regulations for the best interests of the public with respect to that particular class of traffic, so as to neither hamper commerce nor the carriers.

Mr. STEVENS. We assume that, too; but that does not meet the situation I stated. You people claim that you have a property right. I should dispute that, because if you have a property right the Interstate Commerce Commission can not take it away from you and that provision in Mr. Townsend's bill is null and void.

Mr. WILSON. If we concede that right under those conditions, is it not reasonable to suppose that they would establish a rule or regulation under which commerce could move and the carriers could handle traffic?

Mr. STEVENS. Yes; but you ask every man to concede his own personal rights every time the commission wants to make an order. That would be intolerable. It is impossible.

Mr. WILSON. On the other hand, to deny to the shipper the right to route his freight, you would have to take exactly the other view of the situation, and take away from the shipper any rights he may have, even assuming there may not be a right in the shipper in this matter, because you are placing unqualifiedly in the hands of the carrier the absolute right to route this freight regardless of any extraneous conditions, and regardless of the wishes of the owner of the property.

Mr. STEVENS. That is not the position the committee would take at all.

Mr. WILSON. I may be wrong about that.

Mr. STEVENS. You are wrong.

Mr. WILSON. But it seems to me that is the condition.

Mr. STEVENS. Do I understand that you, as commissioner, have objected to the railroads because the right of stoppage in transit has been interfered with by wrong routing?

Mr. WILSON. I am afraid I do not catch your meaning, sir.

Mr. STEVENS. As I gather from your statement, the right of stoppage in transit for loading, unloading, or changing the form of the merchandise is a very common and prevalent custom in your section of the country and in our section of the country.

Mr. WILSON. In the United States.

Mr. STEVENS. Yes. Do I understand that that practice has been interfered with by the railroads to an extent that interferes with that

business, because they choose to route freight in any way they see fit rather than in any way the owner of the property sees fit?

Mr. WILSON. No, sir; I have not made that complaint. I have not that complaint to make.

Mr. STEVENS. Then in what way would this act interfere with stoppage in transit?

Mr. WILSON. It could interfere in several ways. With respect to the privileges now enjoyed, covered by properly published and filed tariffs accepted by the commission, we are given in certain cases the right to complete loads at intermediate points and the right to partly unload at intermediate points.

Mr. STEVENS. You enjoy that right now.

Mr. WILSON. We enjoy that right now; yes, sir. If the right to route is put absolutely in the hands of the railroad the railroad can, at any time it sees fit, say to us "We will not send this property by that route; we will send it by this other route," and then we can not enjoy either the privilege that we enjoy now or the privilege that is published.

Mr. STEVENS. Are there any further questions, gentlemen?

Mr. WILSON. I would like to refer, if you please, for just a moment to the rate-quotation subject again, and point out the difference between the Mann bill and the Townsend bill; and I would like to say in this connection that with respect to rate quotations I favor that portion of the Mann bill as against the Townsend bill.

Mr. ESCH. What is the section of the Mann bill?

Mr. WILSON. That section of the Mann bill begins on page 24, line 14, and runs through line 11, on page 25. That section of the Townsend bill begins at line 5, on page 14, and runs through that page. I would also like to say a word with respect to that part of that section, lines 1 to 13, on page 15, in the Townsend bill.

The Townsend bill, as I stated this morning, and as you are aware, provides for a penalty of \$250. It would not be a penalty in fact, under certain conditions in my judgment. The Mann bill provides for a penalty of not more than \$5,000, and it also provides for the protection of the rate published without the carrier or the shipper being subject to prosecution for accepting or receiving or giving a rebate or unjust discrimination. In other words, along the line of my argument this morning, the Mann bill comes nearer making the punishment fit the crime than the Townsend bill.

Now, it has been argued by those who oppose my view of this situation that the punishment should fit the crime; that it is not legally possible in this law to provide the doing of a thing which is already prohibited in the act. I am not enough of a lawyer to know anything about that, but it does seem to me that there is power some place, somewhere, and I believe that this committee can find it, by which the shipper can get the protection of a rate quoted, and that it can be done without laying either the shipper or the carrier liable to prosecution for receiving or accepting rebates, or for giving rebates, or for unjust discrimination in either case. It seems to me to be necessary in order to assure better, more efficient service in the quotation of rates, for the protection of other carriers, and for the protection of the shipping public that some means should be found by which this protection can be assured.

With respect to that part of the Townsend bill on page 15, lines 1 to 13, inclusive, providing for the designation of an agent by each railroad in each town, village, and city, who shall quote rates on application, it seems to me that the only result of the enactment of that part of this section into law would be that the railroads would conform to this law literally as far as the public and as far as the notice is concerned; but in practice the instructions of the agents at the stations, at the country points particularly, would be that they were not to quote any rates to anybody without first having the specific authority or the specific rate quoted to that agent by the general office—either the general freight office of the railroad or the division freight office in charge of that particular territory.

At the present time, under rules established by the Interstate Commerce Commission under authority given them by the Congress, certain stations throughout the country are designated as rate-quoting stations, in which all the tariffs to which that railroad is a party are on file and are subject to public inspection. I have frequently had occasion myself to inspect these records, and they are kept generally in a very able and efficient manner. Anyone at all familiar with tariffs can not only go there and learn the rate that he is seeking, but he has the help of an efficient clerk, one familiar with the tariffs and familiar with the files, to help him find what he is seeking. This section might tend to do away with that class of offices. The present plan, so far as it has been worked out, I think is working very satisfactorily.

Mr. STEVENS. Then what would you suggest about that?

Mr. WILSON. As to what?

Mr. STEVENS. As an amendment, or some method by which competent men can be secured.

Mr. WILSON. I suggest a provision along the lines of the section in the Mann bill, making it obligatory on the part of the carrier to protect the quoted rate in case of bona fide business transactions on such quotation, protecting the shipper against loss between the quoted rate and the locally collected rate, and imposing a fine or a penalty (paid or ordered against the railroad simultaneously, through the medium of the Interstate Commerce Commission or such other body as Congress might designate), of the railroad's earnings on that particular traffic involved. That sounds drastic, and it sounds very radical, and I would a good deal rather not say that if I could say anything else which I thought would bring about the same result. That result would be that the "mistake clerk" would soon go out of business, and the railroads would put competent men in positions to quote the correct rates.

Mr. ESCH. By "earnings" you mean the gross freight rate?

Mr. WILSON. I mean the gross earnings on that traffic; yes, sir. If their earnings were \$100, I would have them pay \$100. If the loss amounted to \$10 on the transaction, I would have them pay at the same time to the shipper who sustained that loss the \$10. Their cost on that is \$110 in addition to the actual cost of the service. Then the "mistake clerk" would not work overtime.

Mr. STEVENS. Did I understand that you were complaining that the railroads would not furnish enough clerks to do that work, so that you could not go to the ordinary offices and find a correct quotation of the rates?

Mr. WILSON. I do not think that that bill would result in the employment of one additional rate clerk in any railroad office.

Mr. STEVENS. Would it not result in the employment of less?

Mr. WILSON. In the employment of less?

Mr. STEVENS. Yes; because if you make the penalty very drastic the railroads could only afford to hire the very best and highest class men, and concentrate them in places where they would not make mistakes. They would not scatter them over the country.

Mr. WILSON. I misunderstood you. I thought you had reference to the Townsend provision.

Mr. STEVENS. No; I had reference to your statement.

Mr. WILSON. Well, I do not know that it would either increase or decrease the number of employees.

Mr. STEVENS. They could not increase the number of places along their lines where quotations could be made, could they, with those penalties?

Mr. WILSON. I would not ask them to do so; but they could employ a class of men, and pay them a sufficient compensation to enable them to get that class of men, who could and would quote the correct rates. That is all I have to present.

Mr. STEVENS. Is there anything further? What have you further, Mr. Lincoln?

ADDITIONAL STATEMENT OF MR. J. C. LINCOLN.

Mr. LINCOLN. In view of a remark of yours, Mr. Stevens, with regard to the routing of the business, I think you possibly had it in mind that where a shipment was made from a country point to be milled in transit, or to be reconsigned, the declaration was made at the time of the original movement, and that any reconsignment or routing could be observed and respected at that time, there being a provision in the tariff as to the protection of the through rate in the event it was reshipped.

The actual facts of the case are that at nearly all these points where transit is protected it is not the universal rule, but it is the general rule that the shipments move to the milling point on the local bill of lading at the local rate. The shipper has no knowledge and the railroad has no knowledge in advance that the shipment is ever going forward again; but there are provisions in the tariffs which permit milling in transit and reconsignment, each based upon the protection of the through rate when the property goes forward. It is a part of the tariff condition.

I will give an illustration of the milling in transit and reconsignment privileges at Louisville, Ky. That is a privilege that is given. That business can be forwarded to points in the Southeast, from Louisville, in the shape of flour, or it may be reshipped on the through rate from St. Louis; but when the grain is sold by the St. Louis man it is sold to Louisville on Louisville terms on the local bill of lading. So far as the shipper is concerned, or so far as the railroad is concerned, it has no knowledge that it is ever going beyond. On its arrival at its destination the man at the destination has knowledge of it.

I know in the handling of wheat out of St. Louis to the east with the transit privilege, that the initial line gives a written order to have it come in over a certain route in order to get the benefit of the

through rate, it being billed locally to that point. There is nothing on the face of the tariff or on the shipment to indicate that it is ever going beyond. The road has taken it to that point on the local rate by its own route, or any route it may have to that point, of course. It is going to protect the tariff rate to that point. By using an irregular route or one different from that instructed by the shipper, it deprives him afterward of the through rate, because it would not apply via that route, and the reconsignment privilege would not apply to a shipment coming in that way. They are not infrequent cases. They are occurring nearly all the time.

Of course the other feature of routing was in order to give your customer the very best service. I spoke before, gentlemen, of the case of the Nashville, Chattanooga and St. Louis Railroad. It was giving the best service to Chattanooga, Nashville, and Atlanta, but the freight had to be given at St. Louis to lines whose routes, though they went to the same destination, went in some cases on their own rails and in other cases through other carriers that would give the initial line a much longer haul than it would secure in connection with the Nashville, Chattanooga and St. Louis under its published through rate. The shipper wanted, for the benefit of his own goods, and prompt arrival at destination, and for the benefit of the consignee, to send it by the route giving the best service.

There is another thing. I would say that we have in St. Louis cases where if the shipments are forwarded by certain routes, applying into St. Louis, the deliveries can not possibly be made to the points to which the freight should be delivered, where it has been diverted; whereas had the original instructions been complied with the deliveries could be made. That is due to physical possibilities in the shape of no connections. We have not connections with certain lines. St. Louis is a big district, and they do not all enter.

I was under the impression, Mr. Stevens, that you thought the road or the shipper had knowledge in advance of these transit privileges, and therefore it being a part of the tariff, that the railroad could not disregard instructions of that character as to routing; but as a matter of fact the originating line and the shipper have no knowledge as to what is going to be the ultimate disposition of that property. I just wanted to make that clear.

I would now be glad to have you hear Mr. Boswell, of Quincy, Ill.

**STATEMENT OF MR. LEWIS B. BOSWELL, COMMISSIONER
QUINCY FREIGHT BUREAU, QUINCY, ILL.**

Mr. BOSWELL. Mr. Chairman and gentlemen of the committee, the technical discussion of these questions has been so exhaustive and so complete that I do not think it is within the province of one who is not thoroughly skilled in the science of railroading from previous education to go into the depths and technicalities; and as my education has not been along that line I would like simply to offer a few thoughts in behalf of the general shipper in the smaller places, as a component part of the whole.

We realize the fact, of course, that in the greater centers of trade and traffic there are ample and due facilities to meet the requirements of transportation.

The best of skill, the greatest of knowledge, in the operation and transportation of freight or passengers is brought within the radius

and within the reach of most of the larger centers, and a contrast, therefore, with the smaller ones can be made by you to bring out the necessities of the case in the application of a law or an enactment that applies alike in each of the respective communities. In the performance of its duty it would seem as though a committee of Congress would be performing the best of service if in framing a law or an amendment to the act it would couch it in the clearest language possible, so that ambiguity would be dispensed with and so that the man in the small station who is charged with a knowledge of the law and the act can read and determine without the aid of an attorney. There are many of them—law-abiding citizens—who advocate all of the reasonable laws necessary in the application to rates, fares, schedules, etc. Some of them are not highly educated, and very few are educated in the law. Now, if it is necessary for the commission in passing upon some of the phrases of the act to say that the language of the act is ambiguous, it certainly is competent for the layman to repeat it to you.

I have in mind also the men who are in the railroad service—clerks, freight clerks, managers, general agents, etc.—who are chargeable with a strict adherence to this law, and any violation or omission that would bring upon them censure is very liable to cause them to lose their positions. They become confused. They do not know. They can not interpret. In connection with the act to regulate commerce, they and the shipper must become cognizant of the rulings of the commission and in some measure of the decisions of the courts. All these things tend to a certain confusion which, if it can be either swept aside or modified, will, I believe, tend very largely to a simplification of many of the problems and assist in smoothing the way for amicable relations between the shipper and the carriers, which is the ultimate result or the ultimate end that many are seeking and wish for.

I wish to approve of the position taken by the president of the National Industrial Traffic League in his very able presentation of his case before the committee; and I consider him one of the few men in the United States who can deal with the subject in a capable manner and in such a way as to interest and probably enlighten this committee. I would prefer to confine my remarks in a general way simply to the provisions of the Townsend bill which apply to agreements between carriers, the quotation of rates, and a certain effect upon water competition.

I assume that in the daily practice of affairs there is nothing that is so confusing, that brings about so many disagreeable conditions, as the misquotation of rates. If by some wise provision between the carriers tariffs can be issued so that the ordinary man or the ordinary rate clerk can read them, it will very largely reduce the feeling, the ill-feeling, in fact, which arises as between the shipper and the carrier, and which is the outgrowth of these mistakes in the charges made for transportation.

Many of the features that have been discussed enter into the fabric of this transportation proposition, but do not reach all the shippers alike; but the error in the rate is general, and it is brought home to the smaller as well as the larger shipper.

Mr. ADAMSON. Did you suggest a moment ago that those rate sheets might be prepared in such form as to be understood by a man of ordinary intelligence?

Mr. BOSWELL. I say I hope that that will be the result of wise legislation, that railroads can and will simplify their tariffs so that the ordinary man can understand them.

Mr. ADAMSON. You do not believe, then, that it is absolutely necessary to run the railroads entirely in foreign languages? [Laughter.]

Mr. BOSWELL. I am an American.

Mr. ADAMSON. You believe that the rate sheets should be made so that we can understand them?

Mr. BOSWELL. I would prefer the English language pure and simple.

Mr. ADAMSON. United States language.

Mr. BOSWELL. And figures so that any man can read and understand them.

Mr. ADAMSON. And you believe it can be done?

Mr. BOSWELL. That belief, sir, would be akin to a hope. I think that under the very wise provisions of the Interstate Commerce Commission, since the Hepburn Act, great progress has been made in that respect, but we have not reached—

Mr. ADAMSON. Is there really any reason why human skill and understanding could not construct these rate sheets in United States language so that ordinary people could understand them?

Mr. BOSWELL. I think not, sir. I think it can be done if the will is there to do it.

Mr. KNOWLAND. Do you not think it would be easier and that the railroads would be glad to have them as simple as possible?

Mr. BOSWELL. I am glad you have asked me that question, sir, because I believe the economy that would result to the railroads would repay a thousandfold the cost for the simplification of their tariffs, as compared with the liability of error growing out of these complicated arrangements.

Mr. KNOWLAND. If that be true, do you not think it is very probable that the railroad companies would desire to do that?

Mr. BOSWELL. I hope they will desire to do it. I think many of them are reforming their tariffs and getting away from the old systems of dots and figures and characters and signs and references to some other tariff. If even a railroad man does not know how to understand them, how can one not skilled in the art pretend to?

I speak of this error in the quotation of rates because it reaches the pocketbook of the individual. When you reach a man's pocketbook you reach his heart, in many instances, and you cause trouble and dissatisfaction and the desire for legislation to correct the condition. The average shipper becomes cross and surly and vents his spleen upon the carrier, and probably upon the poor traffic manager who does not know and can not do, because of surrounding circumstances. I have here the bill of lading for a shipment that was made in South Dakota, in which a rate is inserted of 30 cents on household goods. That bill of lading says:

Second, that the freight charges herein which * * * agree to pay to said company shall be as follows: Carloads, so much per 100 pounds.

Is that a contract of carriage? The Supreme Court says a bill of lading is a contract of carriage. If so, should not the consideration—the cost—be named? This contract seems to require that the man shall pay 30 cents per 100. When the freight reached its destination the man was charged 41 cents per 100, and upon investigation it was found

that the agent at the point of origin had evidently made a mistake, because his own company repudiated his figures and stated that there was no legal tariff in effect that carried it. The result was that the shipper was out the difference, and there was no method of reparation.

Now, that man is mad, and he is only a sample of a great many; and he wishes that Congress or some other power would legislate so as to protect him in the rate that was in the bill of lading. That is an erroneous quotation. It is a misquotation. If it is possible to so word the present amendment as to protect the shipper, will you not please do it?

I had occasion to ask the general freight agent of a railroad for a rate from a point on his line, or a connection of his road. He quoted the rate, and said, "You will find it also in the tariff" which was sent. Accepting the rate in good faith, the shipper was told that the rate would be thus and so. It subsequently developed, however, that the real rate was very much less than the general freight agent had quoted, and the rate clerk in his own office apparently did not know his own tariff.

It is not necessary to dwell upon those things, Mr. Chairman. I simply mention them in passing, as I want to be as brief as possible.

Before passing from this section 8, with regard to the quotation of rates, there is a very important proposition that should be considered by the committee, and that is as to including express companies. Section 8 as it now reads, page 14, line 5, states, "If any railroad corporation, being a common carrier subject to this act," etc. That, as I understand it, limits this to a railroad corporation. Why limit it? Striking out the words in line 5, "railroad corporation, being a," would make the opening line of the paragraph read, "If any common carrier subject to this act," etc.

MR. TOWNSEND. Have you studied to find out what other changes you would have to make in that to make it conform to your ideas?

MR. BOSWELL. You mean the language following, Mr. Townsend?

MR. TOWNSEND. Yes, sir; I think you will find some provision in there——

MR. ESCH. I think the first line on the top of page 15 would have to be changed. That was suggested by Mr. Lincoln day before yesterday.

MR. BOSWELL. With regard to the posting of the tariffs, yes. The alterations should be made wherever required. I am simply calling attention to the substance, without attempting to suggest the absolute correction, pro forma, as I feel that these matters are all so clearly within the hands of the committee that nothing more than a reference to them is needed. There is no doubt but what the express companies as common carriers under the act should be covered and included in each and all of these amendments as they appear, as common carriers are affected in the matter of carriage or transportation. Why? Because the great shipping public of this country need it. There should be no doubt as to the intent of the act. The ambiguity that I mentioned a moment ago should be entirely removed. If the act were to pass as written, would not the express companies claim relief and say that they are not included in this section? Is it the intention of the committee that they shall be? If so, call a spade a spade, and make it read just as you intend it.

Mr. TOWNSEND. I believe I ought to say there, if that is going into the record, that that matter was not brought up when this bill was considered. Personally I am very much in sympathy with the notion if it can be arranged properly so as to include the express companies and water carriers; but there was no intention of using any term that would be misleading.

Mr. BOSWELL. I think, Mr. Townsend, there will be a very grateful shipping public if you will include the express companies under the requirements, the same as the railroads, and, further, not discriminate against the railroads and in their favor, as this would do.

Mr. TOWNSEND. You are going to have somebody here familiar with the express company management, so that we can know exactly from a practical standpoint what the situation is.

Mr. BOSWELL. I am not authorized to speak for the gentleman, but I would say that Mr. Barlow has given this matter a great deal of thought, and I hope if he speaks to the committee he will go into the subject very clearly. I simply say for myself that it has been endeavored on the part of the shippers of Illinois to obtain the passage of an act by the legislature that would unqualifiedly place the express companies under the control of the railroad and warehouse commission. Through the skill of attorneys, and after having obtained the opinion of some of the brightest legal minds in Chicago, I am informed that there is a possible hope that one section, a few words in one of the acts passed in 1871 or 1872, includes express companies, so as to place them under the control of the railroad and warehouse commission. It is hanging by a thread because the express companies were not specifically named throughout the act as being parties to it, but simply in the closing paragraph.

Mr. ESCH. In view of the fact that the Hepburn Act puts sleeping-car companies in the category of common carriers, why not include them in this section 8?

Mr. BOSWELL. I should make it "common carriers" without any stipulation. Mr. Esch—"common carriers subject to this act." As the act has provided or defined who are common carriers, it naturally follows that it must cover all who are subject to the act as common carriers, if I understand it correctly.

With regard to section 7, relating to agreements between carriers subject to the act—

Mr. ESCH. Excuse me; but before you leave section 8 I would like to ask you a question that I have asked of all the other witnesses, as to the use of the words "within a reasonable time" as against a definite expression of time within which to quote a rate. That is at line 12, page 14.

Mr. BOSWELL. Yes. What did you want me to answer? As to what is a reasonable time?

Mr. ESCH. No; what would be your idea as to the language we should incorporate in section 8?

Mr. BOSWELL. I believe I would call upon the carrier to use due diligence in the performance of its duty after a request has been made. If it uses due diligence, and within a reasonable time, it has done as much as it can. I am not disposed to ask an impossibility of a carrier nor to feel that they can respond immediately to all questions. Sometimes a shipper will put in a request for a number of rates. I know of one instance within the past week where one of the lines at

my city was asked for some 150 rates—that is, to different points. The rate clerk has got to have time to go through and figure them all out. Now, what is the reasonable time that he should have? Suppose there is only one rate clerk, and he has to perform a lot of other duties?

MR. ADAMSON. According to the way you gentlemen depict the difficulties, I think they should have about two years to look up those 150 rates.

MR. BOSWELL. That would not be giving due diligence.

MR. ADAMSON. According to the difficulties depicted by all of the witnesses except you. You are the only man who gives me any hope at all about a man of common intelligence being able to comprehend these things. [Laughter.]

MR. BOSWELL. As I say, I do not want to be unreasonable. The exigencies of the case should always be taken into consideration, and the shipper is entitled to a prompt reply to his inquiry. But what is reasonable as regards the carrier and what is the reasonable position as regards the shipper? Mr. Lincoln thinks that forty-eight hours is a reasonable time. He is a man of very wide experience.

MR. ADAMSON. Forty-eight hours each for 150 requests would be just about a year, you know.

MR. BOSWELL. I believe I would be disposed to realize and recognize the difficulties that apply where a great number of rates are asked for. If it is one rate, why, a return by telephone is all that is necessary.

MR. TOWNSEND. But the bill provides for written information.

MR. BOSWELL. I say as regards the matter of time.

MR. ADAMSON. If he writes it, and the telegraph operator transmits it, and the fellow that delivers it writes it, is not that in writing?

MR. BOSWELL. That is in writing. Mr. Wilson referred to the fact that these rates were concentrated at different points under the order of the commission, and that therefore they were accessible to the shippers, and that, of course, assists in obtaining this information where the rate clerk does not happen to have the tariff. Remember that all the tariffs are not in the files of every local freight office, and that when you get into the smaller towns there are very few of them, and as to the express tariffs, there are none.

Now, in these stations where all the tariffs are filed as required by law, and are accessible to the public, I can conceive how the rate man could be very prompt in getting that information. But suppose the request for information comes to some of the smaller communities where there is no such extensive file, and where a man who is the railroad agent, telegraph operator, express agent, baggage agent, freight deliverer, and everything else has got to find that rate—and he does not know anything more about it than you or I do. He has to ask somebody else. He must telegraph or write, and I believe there are some restrictions as to what shall be telegraphed or what use of the wire shall be made. Therefore, whatever would be a reasonable time must be coupled with the exercise of due diligence and haste in responding to the person that presents or makes the request. If there are innumerable rates—that is, a large number—common sense should govern, and a reasonable time should be given according to the circumstances. I do not believe I could say as to what should be required definitely—whether forty-eight hours or seventy-two hours. If it is a single rate, I would not hesi-

tate to say within a very few hours. So there are these complications that arise; and I know it is the desire of the committee to make the phraseology of this clause such as to be fair and reasonable to all; and to that I subscribe.

With regard to this matter of railroad associations, section 7, line 24, reads:

"Agreements between common carriers subject to this act specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish shall not be unlawful if a copy of such agreement is filed with the Interstate Commerce Commission," etc.

On page 11 of the act to regulate commerce there is now a provision reading: "Every common carrier subject to this act shall also file with said commission copies of all contracts, agreements, or arrangements with other common carriers with relation to any traffic affected by the provisions of this act to which it may be a party."

I would like to raise this question for the consideration of this committee: In view of the fact that the act now requires the common carrier to file with the commission copies of its contracts, agreements, etc., what is the present intent of requiring them again to do that which is already provided unless it be to legalize, what? The agreements? Or to recognize the existence of an association? The law requires that these agreements shall be filed. They do not say they shall be unlawful. Now, as this reads here it says that they shall not be unlawful if such an agreement is filed with the commission. So it would seem that there must be something more than the agreement which is already covered by the act, and though I may misapprehend the subject entirely, I would like to raise the question, just for consideration (as it is human to err, and I am human), as to whether it is not intended to legalize an association by reason of recognizing these agreements.

Now, all the shippers are perfectly willing, so far as I know—I certainly am—that the railroads shall have a perfect right to meet in association for the proper carrying on of their business. I think it is proper and right that they should do so, and it is only fair that they should be given the opportunity to meet as men and not have to wear gum shoes to evade the law.

MR. TOWNSEND. Will you specify in particular what are some of the advantages you think the carriers would enjoy by such an agreement, which would not be harmful to the public?

MR. BOSWELL. The management of one of the biggest businesses in the country, and the intelligent and intellectual management of it, by right of meeting and saying what natural condition prevails that should govern or should apply under the circumstances that exist. Secondly, that the shipper will be assisted more largely in the carrying on of his business by being able to treat with the carriers in a combined form, or in an association if you please, than if they are scattered all over the land. It is natural, if men are interested in a common cause and common purpose, to meet and consider, and to determine as to what is the best policy and the best methods to be carried into effect; but here we intrench upon another very serious proposition. If in these meetings latitude is allowed to the extent that has been read into this clause by some, does it permit them to pool and to form an association that for the time being takes them above the other regu-

lations or intrenchments of the act? I am told no. Why? Because it says that such agreements shall be subject to the act as heretofore.

If it is intended then that this amendment to section 5 shall not in anywise impair the force and effect of the preceding or the present section 5, would it not be well to say that nothing in this clause shall be construed as authorizing pooling in contravention of the preceding section?

Mr. ADAMSON. I would feel safer if you put that in.

Mr. ESCH. In other words, your idea is that with the declaration embraced in section 7, without any reference to section 5 of the original act, the implication may be very strong that by that fact alone we practically repeal section 5?

Mr. BOSWELL. You are amending section 5, are you not?

Mr. ESCH. Yes.

Mr. BOSWELL. I am not a lawyer, and do not propose to stand here and discuss this from a legal standpoint, but simply as a business man. What would a court read into it, if it is passed as at present framed, without a declaration in it that nothing in this section shall be construed as permitting pooling? Yet you are amending the pooling act by adding onto it this subsequent act. This is a clause of the paragraph here, line 7:

But all provisions of the act to regulate commerce, approved February fourth, 1887, as amended, and all provisions of this act and any future amendments thereof shall apply to such agreed rates, fares, and charges, and such agreed classifications, and the Interstate Commerce Commission shall have like control over and power of action concerning any agreed rate, fare, charge, or classification, including suspension of the rate or classification, before it becomes effective, etc.

Does that mean that that prohibits this pooling proposition? I am simply raising the question for your consideration, because if pooling is ever permitted to become possible again it will be very unsatisfactory to the great shipping element of this country. The shippers look to Congress to protect them, as a child to its father, as the helpless to their protector and benefactor, to see when enacting these laws that the wisest provisions shall prevail for the protection of the man who is not able, perforce of his strength, his position, or his environment, to battle with that which is set up by a higher or stronger power. You have the power. If it is exercised as we know you desire it to be, the great body of shippers of this country will realize their interests are safeguarded and in the hands of those who are considering the man in the smaller city, the man in the larger city, and I hope also the man in the traffic department.

I do not believe that the wisest and strongest of the managers in this country on the railroad side of the case are really in favor of pooling. I have read statements in many of the discussions in times that have passed, and have accepted them to be true, of course, to the effect that the managers of some of the largest railroads, perhaps, in this country do not want pooling.

Mr. TOWNSEND. What is your definition of pooling?

Mr. BOSWELL. An agreement between carriers for the division of tonnage or earnings regardless of whether it is earned by the carrier or allotted to it under a percentage basis. Not being a traffic man, Mr. Townsend, I can only give it to you as an outsider.

Mr. TOWNSEND. That has been my understanding of the definition. I was wondering how you can construe that provision there to include

pooling arrangements with your definition—"specifying the classifications of freight, and the rates, fares, and charges for transportation of passengers and freight which they agree to establish, shall not be considered unlawful," etc.

MR. BOSWELL. Mr. Townsend, I hope you will excuse me from occupying the attitude of construing it. I am raising the question for the committee to determine as to whether it does.

MR. TOWNSEND. Oh, yes.

MR. BOSWELL. Whether it naturally follows because of the absence of the phrase "nothing in this section shall be construed as authorizing pooling." What is the objection to stating in it that nothing in this section shall contravene this pooling clause?

MR. TOWNSEND. There would be no objection, to my mind, if it could under any circumstances be construed as permitting the pooling to which you refer. That question had been put, and the definition had been submitted, the same as you have submitted it. I have been unable to see how it could possibly include that permission, and not including it I could see no reason for excepting that any more than any other things that were irrelevant.

MR. BOSWELL. I have the highest respect for your legal mind and good intentions, and I will pass the proposition.

MR. TOWNSEND. The latter part perhaps is well founded; but the former is rather exaggerated.

MR. BOSWELL. I am not of a legal mind, and know nothing about that. I merely wanted to raise the question.

MR. ESCH. Right in that connection, Mr. Boswell, let me put a question. That provides that these agreements as to classifications of freight and the rates, fares, charges, and so on, "shall not be unlawful if a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made." The original Hepburn Act legalized the rate after it has been filed with the commission for a period of thirty days. Is there any discrepancy between those two limitations as to time?

MR. BOSWELL. I believe there is, Mr. Esch, and it might occur in this way: It reads, "if a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made, and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission." Of course it may be filed on three days' notice by the consent of the commission. That is within twenty days, is it not? Three days is within twenty days. Now, what is the construction?

MR. TOWNSEND. Pardon me for interjecting, sir, a suggestion or two. Unless we have badly stated the proposition, this is what that section amounts to: Agreements affecting rates, fares, classifications, and so on shall not be unlawful. What is meant by that is that even though they are made where the parties are representing competitive lines, and would therefore be forbidden under the Sherman antitrust law to enter into such an agreement, those agreements, however, do not affect existing rates. They do not stand as a schedule of rates, and do not operate as a published tariff, but simply as an agreement entered into between these parties, subject to all of the conditions, however, applying to individual rates, as to reasonableness and justness, as apply now under the existing law.

Mr. BOSWELL. I think your explanation is not only timely, but it is very valuable in view of the opinion of the Supreme Court that these acts must be taken in the light of their history as to the explanation that is being made or has been made by those who legislate; and when this point came up——

Mr. TOWNSEND. I do not want it to rest on that. I want it to rest entirely on the language used in the section. The last part of that section corroborates or confirms what I have stated in reference to the intent of the framers of that provision. If it does not, and if in your judgment that could be construed so as to countenance pooling, then it has gone wide of the intention of the men who framed it.

Mr. BOSWELL. If I were to write that amendment as a business man, Mr. Townsend, I would put in there "nothing in this section shall be understood as contravening the previous law." That is what I would do from a business man's standpoint. But what a lawyer's idea would be is different. I am not capable of discussing it from the legal standpoint, but simply from the business standpoint. If I were to write it, I would remove all ambiguity.

I would like only briefly to refer to what seems to be a very important proposition, and I trust that the gentlemen who will follow me will discuss the matter with you at greater length, because, as I say, I want to be as expeditious as possible. I refer to the interrelation of this proposed act and amendment with carriers by water. The United States National Waterways Commission has published its report, presented by Mr. Burton, on January 24, Document 301, Sixty-first Congress, which carries with it some items or thoughts that it seems to me weave in with this proposition of rates, fares, classifications, through rates, through routes, and joint tariffs, and all of those things that the traffic men have to run up against. I quote from page 6 of this report:

River transportation again has a decided advantage in that the waters are free, and anyone having the requisite capital and ability can engage in the business. This tends to create competition and to prevent monopoly.

If that is so, that is what we are after. If the rivers or waterways of this country are to be improved—and we are all praying to Congress that they will be, you know that is one of my hobbies—and it is the intent of the law and the intent of the people of the United States that the waterways of this country shall be open and free as a means of competition; as Mr. Burton has expressed it better than I can, the safeguarding of that avenue is a prerequisite, and a thing of value which needs to be treated most seriously; for it would seem, and those who have spoken at the waterway conventions have stated, that it is the only source of competition in the matter of transportation; that water rates govern freight rates by rail, and the maximum of the water rates in many instances becomes the maximum of the rail rates; that water regulation is rate regulation, and all those homely phrases that we are familiar with.

If the Government is justified in expending fifty millions a year in the improvement of the waterways of this country, what will be the purpose, what will be the benefit to the people, if there is no competition? In other words, if the great carriers of this country by rail lay their hands upon the water craft and own them, will it be possible, because of their ability to exchange traffic as between themselves and on their own lines of boats, for the smaller investor to hope

to win or to exist? Can he cope under such circumstances with the larger carrier by rail if the railroad can control the means of transportation by water through its ownership or through other indirect methods? I would like to quote more from this, but I do not want to encumber the record, and I know you will consider Mr. Burton's report in your consideration of this bill.

MR. TOWNSEND. Do you not think that the inhibition of the Sherman antitrust law would apply to carriers by rail and water the same as it does to carriers by all rail against forming a combination in restraint of trade?

MR. BOSWELL. My thought, Mr. Townsend, would be governed by the views of the Interstate Commerce Commission, and that is that where water carriers engage in interstate commerce they would be subject to whatever restrictions, regulations, or control may be laid upon the carrier, but on port-to-port traffic they would not. Mr. Burton's report recognizes some of the dangers which lie in this path. It says:

It has been brought to our attention that in a number of instances railways have temporarily reduced rates and continued them upon a lower basis until competing water lines have been driven out of business. The commission would recommend that in such cases when a rate is once reduced by a railway it should not be permitted to raise the same unless after hearing by the Interstate Commerce Commission or other competent body it should be found that such proposed increase rests upon changed conditions other than the elimination or decrease of water competition.

MR. TOWNSEND. That is another proposition, as I understand it, Mr. Boswell. That is the proposition that the railroad would destroy water craft, whereas your proposition, as I understand it, was that it was to acquire the boat lines.

MR. BOSWELL. To control, by whatever means might be possible, by ownership, or by joint traffic arrangements, or otherwise, that would place the water craft under the control of the carriers by rail.

MR. TOWNSEND. That must ultimately lead us to this conclusion, then, must it not, that we must control the minimum rate of the railroads?

MR. BOSWELL. I do not agree with that, because I do not think the minimum should be established.

MR. TOWNSEND. I do not, either.

MR. BOSWELL. If you establish the minimum you wipe out competition.

MR. TOWNSEND. I do not, either; but I can not see how you reach that end. That is the thing. Perhaps I may before you get through. But I can not understand how you can reach that end.

MR. BOSWELL. I should reach that end in some manner, by making it unlawful for the carrier by rail to engage in carriage by water—if that is a lawful proposition.

MR. TOWNSEND. But that is not what causes your trouble. That is not what destroys your water craft—by the railroads purchasing the lines.

MR. BOSWELL. What does, then, Mr. Townsend?

MR. TOWNSEND. By reducing the rate so that the boat itself can not afford to carry at that rate.

MR. BOSWELL. Yes; they reduce the rate and drive the boat lines out of existence, and probably they will own them. Let us look a little to the future, Mr. Townsend and gentlemen. The day is at hand when the heavier freight—iron, coal, and all those things—should be

transported by water to relieve the carrier. Now, if the carrier by rail owns and controls craft on the waters, to what extent will the relief in rates be? Who is it that controls the greater commerce on the lakes to-day?

I hope that some gentleman who is better informed than I will answer that question. I am simply raising it for consideration. What is the effective relation, as a matter of fact, on the Mississippi River? Why, there is no through traffic between St. Paul and New Orleans, or between St. Louis and New Orleans. The boats simply do a hand-to-mouth business. We say it is because the river is not in proper condition, because of the fluctuation of depths; that at one time we have 14 feet of water, and three weeks subsequently we have not 3 feet.

Mr. STEVENS. Who says that?

Mr. BOSWELL. I do.

Mr. STEVENS. The reports of the engineers state differently. They state that the river is better than it ever was in its history, and is better now than the river Rhine, which carries 45,000,000 tons each year.

Mr. BOSWELL. Yes, sir. I think that was this last rise, Mr. Stevens—the so-called June rise, you know, that we had in the river. It may have been the year previous. I think the stage of the water was 13 feet and something, according to the gauge, and within three weeks afterwards it was about 3. The navigable depth of the river is the depth at all points between, we will say, the mouth of the Missouri and St. Paul. If there is a bar standing out that only has 2 feet of water on it, how deep is the river for transportation? It is only 2 feet deep.

Mr. STEVENS. You are contradicting the reports of the engineers, which inform us that that condition has not existed and does not exist.

Mr. BOSWELL. I believe the water gauge at Quincy Bridge, or rather at the Bay Bridge, as we call it, will show that decline. The engineers are endeavoring to construct dams so as to do away with all of these sand bars which, as we know, are constantly forming. I am simply taking a suppositious case in regard to the 2-foot proposition as to what is the navigable depth.

Mr. PETERS. How would you say the condition of the river as to navigability compares now with thirty years ago?

Mr. BOSWELL. It is being improved all the time, and I think the upper river is in very fine condition down to La Crosse, or probably below. The work that has been done there has been very effective.

Mr. PETERS. Would you say that the river on the whole, was improved?

Mr. BOSWELL. I think so, by all means; but it has not improved to the practical proposition that would make it reliable both as to certainty of depth, the amount of water, and freedom from the forming of these sand bars.

Mr. PETERS. Has the use of the river increased with its improvement?

Mr. BOSWELL. The use of it?

Mr. PETERS. Yes; the amount of tonnage transported.

Mr. BOSWELL. I have not the tonnage available. I have not seen the tonnage and do not know. The port to port traffic is very active,

but we are speaking about through lines and through traffic. If the carriers by rail can dominate because the river is free to all the carriage by water, what is the ultimate gain to the shipping public as a means of competition?

Mr. KENNEDY. Does it not drive the boats off the river by making exceedingly low rates at points where the river and railroads compete?

Mr. BOSWELL. I beg your pardon, but I did not get the question.

Mr. KENNEDY. The method of driving the boats off the Mississippi River, as I understand it, is by making exceedingly low rates at a competing point, where the rivers and the railroads compete.

Mr. BOSWELL. Oh, yes. That is largely theoretical. The rates by boat, I think, are about 33½ per cent less than those by rail.

Mr. KENNEDY. We had hearings before this committee on that perhaps a year ago, in which those representing a company owning coast-wise ships on the Atlantic, and others owning or interested in transportation on the Mississippi River, were complaining that the railroads made exceedingly low rates, say from New York to Charleston, and then very high rates out 50 miles from Charleston.

Mr. BOSWELL. Naturally.

Mr. KENNEDY. Where the goods were to be; and in that way they made it cheaper to ship by an all-rail route than by the 4-masted schooner down to Charleston, and then out to the destination point.

Mr. BOSWELL. Yes, sir.

Mr. KENNEDY. It was also stated, if I remember correctly, that the railroads would make a very low rate from St. Louis to New Orleans, very much lower than their rates at noncompetitive points along the road, and in that way put the steamboat out of business on the Mississippi River between those two points. Would not the way to correct that be to require the railway to haul as cheaply for a noncompetitive point along its line as it does from a point having other means of transportation?

Mr. BOSWELL. Mr. Burton's reply to that, if I may quote him, is: "A majority of the commission, however, would recommend giving the power to the Interstate Commerce Commission to prescribe minimum railroad rates, whenever in its opinion the object of a railroad in reducing rates is to destroy water competition."

Mr. KENNEDY. I do not believe that competition among the railroads is consistent at all with the regulation of the rates.

Mr. BOSWELL. Mr. Townsend, if you please, Mr. Lincoln has caught for me a thought here that he thinks will answer the question that you propounded. I am quoting from the National Waterways Commission report on page 10, the second paragraph:

The commission would recommend that in such cases—

Probably I had better read a little further back so as to get the subject-matter—

As regards remedies to overcome the second general class of advantages of railways over waterways, those designated as artificial or temporary, the commission has considered a great variety of propositions. It has been brought to our attention that in a number of instances railways have temporarily reduced rates, and continued them upon a lower basis until competing water lines have been driven out of business. The commission would recommend that in such cases, when a rate is once reduced by a railway, it should not be permitted to raise the same unless after hearing by the Interstate Commerce Commission or other body it should be found that such proposed increase rests upon changed conditions other than the elimination or decrease of water competition.

It goes on further; but that is simply carrying out the general proposition.

Mr. KENNEDY. After we get our Panama Canal, within a year or two that question will be a very important one.

Mr. BOSWELL. Yes.

Mr. KENNEDY. As affecting transportation from our eastern seaboard to the western, by the two methods of railroad and water.

Mr. BOSWELL. I think it is a question that is interrelated with this proposition to-day. I am only saying, in my poor way, that as we have had given us the opportunity to-day of coming before you as the representatives of the body of shippers of the United States, we feel that we ought to—and we have taken advantage of it—to say what we believe on these different subjects should result. We have done our part, and all we can do, in the suggestion. I am sure the wisdom of this committee will find means of meeting these very trying situations, and that as doctors of the law you will make a new law that will cure the ills of the afflicted throughout the country. I thank you for your attention.

Mr. ESCH. I do not know whether you care to express an opinion or not, but I would like to put the question to you, nevertheless. In the last paragraph on page 18—

Mr. BOSWELL. Of the Townsend bill, Mr. Esch?

Mr. ESCH. Yes. It says "The commission shall not, however establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character."

Mr. BOSWELL. Do you want me to express an opinion on that?

Mr. ESCH. If you care to, I would like you to express your views on that.

Mr. BOSWELL. The country is growing, and in the matter of transportation we want, of course, the widest latitude, and the best facilities in the transportation of freight and also of passengers. In the matter of freight exchange rates, routes, classifications, etc., why should carriers by electricity or other motive power be excluded specifically from the interchange of freight with the railroad companies? Why should not the commission, if it is granted power to do such things, be empowered to make or prescribe joint through rates with an interstate freight line by express or motor power, the same as by a rail line? There are many communities that are and will be, as the country grows, dependent to a great extent upon the electric line or the motor line. The carriage of the produce of the farm, in order to increase the value to the inhabitants in the interior, will be by the small lines where, in many cases, the physical condition of the country would not permit the building of a line to be operated by steam—I mean, on account of the grades—where you can operate by electrical or motor power. Are you going to cut those people off from having the right of through route and the benefit of through rates because they happen to be on an electric line? I do not mean by that a city line, or one of these passenger carrying interurban lines, that are really suburbans; but I mean an electric or motor line that is engaged in interstate traffic by reason of the carriage of products that are to be sent to the markets by the steam rails, or disposed of in some such manner, where there can and should be under the laws of trade an

interchange of traffic; and I believe it would be only fair and proper to cause this bill to be changed by the elimination of the last four lines, commencing at line 20 and ending in line 23, and not legislate against that condition.

I do not see where the carrier by rail is going to be seriously hurt if these interurban lines bring in freight and can exchange with them. It is building up business. I do not see why they should not do it. I should think they would want all the business they could get, and I believe a great many of the traffic men would be very glad to make arrangements with an interurban line that will give them freight. I think you will find that some of them have done so and will do so. I think there are such joint tariffs in existence. Now, if this is passed, will you exclude them from the operation of the act so as to make them parties outside of the line?

Mr. STEVENS. Have you anything further?

Mr. BOSWELL. I have nothing further.

Mr. STEVENS. The committee is under very great obligations to you.

Mr. BOSWELL. I thank you very much for your kind attention.

Mr. LINCOLN. I was going to call on Mr. Barlow next, if you wish to hear him this evening.

Mr. STEVENS. Mr. Barlow could not close this afternoon, and his testimony will be very important, as I understand it.

Mr. LINCOLN. I consider it so.

Mr. STEVENS. I think we had better wait, then, until to-morrow morning before we take up his testimony. If it is going to be as interesting and important as you indicate, I think the whole committee ought to hear him.

Mr. LINCOLN. I think so, and I will be very glad to have it arranged in that way.

I would state that the discussion so far has been with particular reference to the transportation features and those features that have been indorsed and recommended by the National Industrial Traffic League. As I announced in my opening, I will wish to speak upon other features of the bill in my capacity as commissioner of the Merchants Exchange and in my individual capacity; and Mr. Barlow will wish to speak upon those points, and Mr. Butler, of Chicago. We do not wish that to be confused with the league proposition, but we wish to be understood as representing the views of a great many people on features of the commerce court, issues of stocks and bonds, and the acquiring of competing lines. I would like to speak upon those independent subjects as separated from this feature that is now under discussion.

Mr. STEVENS. Will any other gentleman follow Mr. Barlow on the traffic features of the bill?

Mr. LINCOLN. I believe Mr. Barlow will finish my case.

Mr. STEVENS. Then we will hear you to-morrow morning at 10 o'clock.

(The committee thereupon, at 4 o'clock p. m., adjourned until to-morrow, Thursday, February 3, 1910, at 10 o'clock a. m.)

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART IX

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

HOUSE OF REPRESENTATIVES.

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IRVING P. WANGER, PENNSYLVANIA.

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ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Thursday, February 3, 1910.

The committee met at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

STATEMENT OF MR. HENRY C. BARLOW.

The CHAIRMAN. Will you state who you are, and what position you hold?

Mr. BARLOW. By way of introduction I will state that I am traffic director of the Chicago Association of Commerce.

The CHAIRMAN. That association is composed of whom?

Mr. BARLOW. The association embraces in its membership of about 3,000 substantially all of the prominent shippers of Chicago and the Chicago industrial territory, so called.

The CHAIRMAN. What were you before you became secretary of that association?

Mr. BARLOW. For about thirty-five years I was engaged in railroad service, from trucking freight in a warehouse to nine years as general manager, to vice-president, and president. My experience in railroading, in observation, covers about half of the railroad experience of this country.

I want to say by way of preface to my remarks that we disclaim any property right in the right to route freight. We have a commercial and industrial interest in that right. I think Mr. Wilson, of Kansas City, in stating yesterday that they claimed a property right meant not a right to route the freight—a property right in that—but merely a property right in the contents of the car.

In taking up the question before you, I have confined myself largely to the so-called Townsend bill, because that embraces, as does also the bill of the chairman, the substance of the amendments which the Association of Commerce stands for. My relation with the Association of Commerce is somewhat different from Mr. Lincoln's connection with the Merchants' Exchange of St. Louis and from that of many other so-called industrial traffic men. I have no relation with the personal relation between the individual shipper and the carrier. Our organization deals only with those things that are fundamental, for the good of Chicago; its environments; the patrons of Chicago. Therefore I do not come in as close contact with the technique of traffic work as does Mr. Lincoln and as do others who have addressed you, although my long connection in railway service brought me into intimate connection with that.

Mr. KENNEDY. If the right to route the freight was a property right, it would be something that we could not control.

Mr. BARLOW. I rather apprehend that.

Mr. KENNEDY. So that if we have any jurisdiction to direct the routing of freight, or to say how it should be done, it could not be an abstract property right in the shipper?

Mr. BARLOW. I am not a lawyer, but my idea is that we have no property right, as you lawyers understand that phrase, in the right to route freight. But I want to discuss that phase of the bill somewhat at length when we reach it, if that is your pleasure, gentlemen.

Beginning with the Townsend bill, Mr. F. C. Butler, who is the attorney for the Chicago Association of Commerce, is here and will address the Senate committee to-day, and will address you later, if that be your pleasure, concerning the question of a commerce court. That is purely a legal proposition, and we laymen are hardly prepared to discuss it. I want to take up first section 7 on page 12, as to agreements between carriers. I recognize the justice of permitting the carriers to meet to discuss the conditions existing and about to be created. I recognize fully that there can be no proper relation of rates, one territory versus another, which after all is one of the most important transportation questions, more so than the exact measure of any given rate. Commerce is highly competitive, and every locality is straining every possible financial and material interest in extending their commerce, and the interrelation of rates, one territory versus another, is of tremendous importance. I recognize the fact that that relation can not be properly maintained unless there be a certain power enjoyed by the railroads to meet and discuss and fix those reasonable relations. I am convinced, however, if you are to modify the provisions of the Sherman Anti-Trust Law, which as a layman I understand is the intention of this paragraph, that it should go somewhat further, or perhaps somewhat on different lines, from the suggestion in the bill, in just one respect. It is not so much—I say that tentatively, almost—what the carriers do, as it is the manner in which they do it. Transportation charges enter into the cost of all commodities. They are in many instances the very element which makes a successful sale possible. Therefore publicity is an important factor to the shipper in his relation to the carrier, and the greater the publicity, in my judgment the more protection to the carrier—and he is entitled to it—and the more protection to the shipper. I sat in the councils of the railroads for a great many years, from a very humble traffic official to the time when I was president.

I was in the service of the Evansville and Terre Haute, the Evansville and Indianapolis, and the Evansville and Richmond, the so-called Mackay systems. My headquarters were at Evansville. Previous to that I was general traffic manager of the Wisconsin Central and the Mexican Central. I made the first official tariff for the Government of Mexico for the Mexican Central Railroad. When these meetings are held by the executive officers, pending the meeting, first the subjects to be considered are submitted to the chairman or the commissioner of the organization. We will take, if you please, to make it as plain as I can, the operations of the so-called Western Trunk Line Association. Each road which has a subject to consider files with the chairman that subject, and fifteen or twenty days previous to the meeting a docket is made up of all the subjects which are to be considered. Now, gentlemen, we would like that docket made public by filing publicly with the Interstate Commerce Commission. We will see

that we get a copy of it. We want to know what subjects are to be considered. That is very necessary. Let me illustrate: Several hundred carloads of canned goods are shipped every year in the southwest territory, Texas and Oklahoma and that territory. They are all sold one year in advance; the next year's crop is sold this year. They are sold delivered, in nearly all instances. They are sold on the basis of the rates, rules, regulations and so forth in effect. The carriers thoroughly understand that method of doing business.

Now, if a proposition should come up, if you please, in the Western Trunk Line Association, to change the rates, rules, and regulations during the shipping season affecting all the commodities that have been sold under these rates, we admit the carriers have a proper right to change their rates lawfully as provided in the bill. We acknowledge all that. We admit that we sell these goods delivered and take our chances. But it is a business transaction which has been conducted with an understanding between the shippers and the carriers. Now if the subject should come up in the Western Trunk Line Association or the Southwestern or the Trans-Missouri to change the rates, rules, and regulations concerning these future deliveries, we would like to know it before they take action, not after they take action. Then, again, when you step aside from the operation of the Sherman anti-trust law—do not let me try to discuss this as a lawyer, I am only trying to discuss it as a layman—when you step aside and make a special exception on behalf of the carriers, it seems to us there should be the greatest publicity attached to it. Therefore we think these dockets that comprehend all the questions that are to be considered at these meetings which you are now legalizing should be filed with the Interstate Commerce Commission, say, two weeks, twenty days, or something of that kind, before the meeting, that the shippers throughout the country may know the subjects which are to be considered.

Mr. TOWNSEND. Of what advantage will that be to them?

Mr. BARLOW. It will give us the opportunity of appearing before the meetings, which are open to us always upon request, and discussing these things with the carriers before they absolutely commit themselves to the proposition. Now, it is the uncertainty and the constant changing of rates that disturbs the commercial situation in the country.

Mr. ADAMSON. The only advantage that notice would be to you would be in giving you time to prepare for the different things that are coming up?

Mr. BARLOW. Certainly. We need a long time to readjust our conditions.

Mr. ADAMSON. I know, but to prepare to discuss these things with them at their meetings?

Mr. BARLOW. Certainly; that is one necessary thing. Two years ago when notice was served of a change of certain rates in the Southwest, we got the advance notice and went before the association and explained the whole matter to them and this change in rates was postponed for two, three, or four months, until we could shape our commercial conditions to meet the change in the rates.

Mr. ADAMSON. Notice of a meeting does not enable you to prepare like a notice of the subjects they are to discuss. That would enable you to prepare to meet the particular question.

Mr. BARLOW. Certainly; and we now neither know when they are to meet nor the subjects which they are to consider. We deem it is wise, and we think it is eminently fair to us and also to the carrier, that this docket—which I am permitted personally to go and review if I desire to, but do not do it because I do not want to get it that way—should be filed with the Interstate Commerce Commission as a public notice; and then we will get our information from them.

The CHAIRMAN. Do you think that all commercial companies or industrial companies who have meetings of their people to discuss various things connected with their business should give public notice also to the consumers so that they might appear and be heard at those meetings?

Mr. BARLOW. I think, Mr. Chairman, answering that, if you are going to make an exception of the operation of the Sherman Anti-Trust Law in respect to meetings of industrial concerns to fix prices, and so forth, that would be a very fair subject to consider; but this is a departure from the operation of the law.

Mr. ADAMSON. I suggest to the Chairman right there, that the thing which differentiates the transportation companies from all these other associations is that it is a quasi public matter. They get charters from the public, and they partially run the Government, and that is the reason they ought to be published about everything.

Mr. BARLOW. Certainly; it may be unfortunate from the standpoint of our friends the carriers that the application of the law is not exactly the same to public corporations as it is to private corporations and individuals. However, to again answer the Chairman, if we were discussing a release from the operation of the Sherman Anti-Trust Law on behalf of commercial corporations it might be well to discuss the question of publicity.

The CHAIRMAN. The operation of the Sherman Anti-Trust Law is just the same both on the carriers and industrial corporations, as it exists, I believe.

Mr. BARLOW. Now?

The CHAIRMAN. Yes.

Mr. BARLOW. But here you propose to make an exception.

The CHAIRMAN. I do not know whether we do or not. That is the question we are trying to ascertain.

Mr. BARLOW. I say the suggestion is made.

Mr. ADAMSON. But your proposition there to put upon the carriers the duty to notify the public of their schedules and meetings to discuss matters of transportation is to be viewed and discussed with a view to their condition in society, as a part of the Government, charged with functions quasi governmental.

Mr. BARLOW. I presume it would impress some gentlemen that way. But we are not asking, gentlemen, that the shippers individually or through their organizations be notified. We ask that the docket of these proposed meetings, which are now unlawful and which you propose to make an exception and legalize, shall be filed with the Interstate Commerce Commission.

The CHAIRMAN. You say we propose to do something. It is you who are proposing that we should do it. We have not determined that.

Mr. BARLOW. Then I am unfortunate in my way of putting it. Will you please take it that way?

Mr. ADAMSON. We are trying our best to find a way to keep from doing something on these things.

Mr. BARLOW. You are doing quite well at it.

Mr. ESCH. When you say that the docket should be filed, you do not ask that the commission should give publicity to the docket?

Mr. BARLOW. We assume that anything filed with the commission is public property.

Mr. ESCH. The carrier publishes the rate after thirty days' notice. Would it be your idea that the railroads should publish that docket just as they would publish a schedule of rates?

Mr. BARLOW. No; we will get the docket from the Interstate Commerce Commission. It is our duty in that respect. But I only suggest that on the line of publicity.

Mr. ESCH. I understand.

Mr. BARLOW. If the desire is either on your part or ours to make an exception.

Mr. RUSSELL. Your view would be that by filing the docket with the Interstate Commerce Commission the carriers would be restricted in their discussions to the docket so filed?

Mr. BARLOW. Yes.

Mr. RUSSELL. And would not consider any question unless it was embraced in the docket?

Mr. BARLOW. Yes. Now, we often see the docket, but sometimes the thing we are interested in is not disclosed. We get notice of it by the publication of the tariff.

Mr. ESCH. Other witnesses have expressed their views as to the necessity of putting in that same section a declaration that nothing contained therein shall be considered as repealing section 5 of the original act.

Mr. BARLOW. I am glad you called my attention to that. I was quite impressed with what Mr. Boswell said yesterday. Our lawyers tell us, and we have a committee of nine lawyers who have reviewed these matters, that it is always wise to say just what you mean, but they can not interpret this bill as giving the carriers the right to pool, although I shall disclose to you before I finish what I believe to be the ultimate situation unless certain provisions of this bill do become a law. The lawyers on this committee are much more competent to judge of it than I am, but I was impressed with what Mr. Boswell said yesterday as to the wisdom of stating in that paragraph that nothing herein shall be construed as authorizing pools of tonnage or money, or that it does not destroy the validity of anything that precedes it in paragraph 5 in reference to pools—whatever is the proper language. Referring to line 5 on page 14, we have there the words "if any railroad corporation." I am impressed with the thought that this should not be confined to railway carriers; that the day is now here when the operations of the express companies are of importance to the shippers and the public generally. I need not discuss with you the financial operations of the Adams Express Company, Wells-Fargo, or the Pacific Express Company. I think you are all well acquainted with that phase of the question. Suffice it to say that the Wells-Fargo people, in addition to paying 12 per cent dividend, have distributed a bonus of \$36,000,000 to their stockholders. The Wells-Fargo people have recently declared out of their surplus earnings \$300 a share, and the net results of operations of the Wells-Fargo

Company for the last seven years, their net earnings, has practically equaled each year the total amount of money which they have invested in their express business.

It is a matter of common knowledge that the American Express Company is now absorbing the Wells-Fargo, after the declaration of this so-called "melon;" that they have—I think it will be public property soon—purchased the Union Pacific, the Harriman, interest in the Wells-Fargo, nearly 50,000 shares. We shall soon, therefore, be confronted with only one or two express companies in the country. Previous to two years ago there were no express rates published. The testimony before the railway and warehouse commission in Illinois in a suit which I left to come here, discloses that the only general tariff of the express companies was a pen-written tariff in New York. The agents of the various express companies knew only just the rate from their particular station to a very circumscribed territory. Under the orders of the Interstate Commerce Commission the express companies are now undertaking to publish tariffs. They are confined largely to the tariffs within given States, and while they have a tariff showing the rates between points in Illinois, I have not yet been able to secure a copy of it. I think the express companies should be fairly controlled, the same as any other common carrier. I believe it is their interest as well as the interest of the public, and therefore I suggest that in line 5 on page 14, instead of "if any railroad corporation," that language should be "if any corporation." The same suggestion would follow in line 1 on page 15.

The CHAIRMAN. I believe it is conceded that in obtaining the information in reference to rates it will often be necessary to apply to the head office, the home office of the company. Do the express companies have the right to use the telegraph lines to obtain that information without extra cost to them?

Mr. BARLOW. No; under the contracts of the express companies with the railroads they are only entitled to free telegraphing over the lines and the wires owned by the railway company. They acquire no rights over the Western Union.

The CHAIRMAN. Might it happen that in endeavoring to secure this information, in order to get a prompt response to a request for a rate they would be compelled to pay more in telegraph tolls than the express charges would amount to?

Mr. BARLOW. I grant you that without qualification; yes. But I have in my mind this, Mr. Chairman: I see no reason why, if the general express tariff can be on file in New York, it can not be on file in Chicago, in Peoria, and in St. Louis.

The CHAIRMAN. I fully agree with you about all that, and about the desirability of putting the express companies in here, and you will find that in the bill that I have introduced; but I am trying to get information now.

Mr. BARLOW. I will be glad to give it, if I can.

The CHAIRMAN. As to what would be the effect. It is perfectly patent that if the expense of procuring information was very great there would be delay in furnishing the information.

Mr. BARLOW. Why, I apprehend this, Mr. Chairman. If I want a rate, and I live in Chicago, I ought to be able to get it there. If I live in a little village and can not get it, I can write through the agent and get it and pay the postage. If we put the express companies to

any extraordinary expense in replying by telegram the shipper should pay for the cost of the telegram.

The CHAIRMAN. Of course that is not included in that section. Take a line of road in Illinois that does not run to Chicago. Under the arrangements which the express companies have, would they be permitted without charge to make telegraphic inquiry over the line of that road to the Chicago office?

Mr. BARLOW. No; I do not think, to be fair, the express companies should be unusually burdened. But, Mr. Chairman, if these general tariffs are published as provided in your bill, and as it would be provided here if these words I refer to were stricken out, those tariffs would be on file at nearly all of the large cities, at Springfield, Decatur, Peoria, and so on, and the additional expense to the shipper would be only by telephone, perhaps 5 cents, or by telegraph. It does not follow that all of the shippers in Illinois would have to go to Chicago to obtain the rate. We want general publicity of the rates of the express companies; we want them placed on file, if not at all offices, at least in all the principal offices.

The CHAIRMAN. I am not trying to argue the question of the reason, now; I am trying to get at certain facts, certain information. It seems to have been conceded that the average agent of an express company or of a railroad company, apart from the head office, would not be able on demand, himself, to furnish information, accurate, as to rates from his point to any other point in the United States. Now, if that be the case—of course I do not know whether it is or not—how are you going to require an express company to furnish that information without expense, and furnish it speedily, we having assumed that as far as the railroads are concerned they can get it by telegraphic or telephonic communications.

Mr. BARLOW. I should differ with you in your premises. It is possible for the express companies to publish a tariff which will show all the rates from Decatur, Ill., to points of the American Express Company, and I believe they should do it.

Mr. ESCH. It would be simpler? Would there be as many schedules?

Mr. BARLOW. No, sir; simplification is what the public are begging of the railroads.

The CHAIRMAN. If it is so simple that some man who is acting as baggage agent and express company's agent and ticket agent and mail agent at some country office could furnish this information, why could not the shipper himself, by examining the same schedule, ascertain it himself?

Mr. BARLOW. Because the man who deals in dry goods knows the dry goods business and knows very little about boots and shoes, and the man who deals in express and freight rates is a specialist, and we have, I think, the right to assume that the employee of an express company or a railroad, who is employed for a given purpose, is competent to carry out that purpose, and I think we can justly assume, when we come to a specialist who is employed to quote rates and transact the business of a carrier, that he should be competent to quote a rate, Mr. Chairman.

The CHAIRMAN. Do you think that the average country agent, or the average small city agent, of an express company, where they have a hundred agents in the city, is competent to furnish that information on any schedule that can be prepared?

Mr. BARLOW. I will answer that in two ways—no and yes. He probably is not in some cases; but he can be, if he will make a study of it rather than loaf around the station doing nothing, as some of them do; or if the carriers themselves will undertake to train their men in the quoting of rates as they train their firemen, their engineers, their conductors, and you would have a much better result.

The CHAIRMAN. I have no idea how many express agents there are, but there are a great number of them at drug stores where they receive express packages. Do you think that those men ought to be trained to furnish information? I suppose there it would not make so much difference.

Mr. BARLOW. Why, I think it is fundamental that a man who has a commodity for sale, whether it is express transportation or freight transportation or boots and shoes, or hats and caps, should be in a position to name the price for it. Yes; I answer that question, yes; or else they should not maintain these agencies.

Mr. BARTLETT. May I ask you a question?

Mr. BARLOW. With great pleasure.

Mr. BARTLETT. In cities, even such small cities as that which I live in, some merchant or man hangs out his sign, "Southern Express Company." The wagon drives up with the messenger, and you have got a package to deliver to him and you want to know the price, "How about the price to New York from Macon, Ga." It is for the accommodation of the patrons of the express company that they send their wagons about with these messengers, and they ought to do it, to receive the express packages, and keep the customers from going to the office of the express company. Suppose you hang out a sign "Adams Express Company" or "United States Express Company," and the man comes up with the wagon, the man we call the express messenger or delivery messenger, and I have a box there to send to New York, and I want to know what the charges are, and he misstates them or does not know them; what then?

Mr. BARLOW. You are taking into the element, now, the driver of a wagon.

Mr. BARTLETT. Down in my country that is the way they do it, and the man who drives the wagon is about as intelligent as the man who keeps the books.

Mr. BARLOW. If the man who drives the wagon is authorized to quote rates, it is a very simple matter for him to do it even under the present complications, under the circumstances you mention.

Mr. BARTLETT. Now, suppose he says, "I don't know; I think it is this, and I will take this," or he gives a rate, or he can not do it, and he declines to take that package because he will not quote you a rate. As the sufferer you have got to go and sit down and make this written request, or make a request by telephone to somebody, in order to get a rate.

Mr. KENNEDY. If he wants to know the rate, the shipper can go down to the office.

Mr. BARTLETT. Exactly; and he can carry his package down to the office, too.

Mr. BARLOW. Somebody must be authorized to quote the rate.

The CHAIRMAN. Can they restrict this authority to whoever they please, or should every individual be able to quote a rate?

Mr. BARLOW. I think there should be some place in every village, city, and town where some one could give the shipper the proper rate.

I should not consider it fair, as this gentleman [Mr. Bartlett] has suggested, to ask the driver of the wagon who comes for the package to say what the rate is, but there should be some one who is the superior of that driver who can give you the rate.

Mr. KENNEDY. And it would not be unreasonable to ask to have at least one agent on every independent line of railroad?

Mr. BARLOW. No; there would be several.

Mr. BARTLETT. Express companies charge according to weight and distance and value, do they not, ordinarily? I think they do.

Mr. BARLOW. The express business is handled under two separate tariffs. One is a rate per hundred pounds based on distance, to a certain extent, and having for its prime factor the first-class freight rates of the railroad company.

Mr. BARTLETT. Yes.

Mr. BARLOW. It does not follow that an advance in express rates would follow an advance in freight rates or that a reduction in express rates would follow a reduction in freight rates, but that is the primary principle of the express rates. Then they have what they call a graduated scale.

Mr. BARTLETT. Graduated upward, generally?

Mr. BARLOW. Yes; it is graduated on weight and graduated on distance, and with a minimum; and they charge a minimum of 25 cents on packages which are sent collect, and a minimum of 15 cents when they are sent prepaid. They have another rate which applies in competition with the government mail, 1 cent per ounce up to 24 ounces. The express rates are peculiar. Thirty cents will carry a package from Boston to Denver; and less than that will often carry it in competition with the mails.

Mr. BARTLETT. What sort of package will an express company carry from Boston to Denver for 30 cents?

Mr. BARLOW. A small package of 2 or 3 pounds—of 1 pound.

Mr. KENNEDY. They keep that rate just under the mail rate for packages, as far as it can be done with a profit, and then they let the mail carry it where there is a loss.

Mr. BARLOW. I could not quite say how it is done.

The CHAIRMAN. I am glad there is some place where they carry express such a long distance for 30 cents. It has never been my fortune to have an express package carried any distance for so small a sum.

Mr. BARTLETT. Nor mine, Mr. Chairma

Mr. BARLOW. While you might be able to send that [indicating package] from Boston to Denver for 30 cents, they might charge 25 cents to carry it from here to Georgetown, or to send it from my town to the next town, 25 miles. Now, the whole country east of the Rocky Mountains happens to be very much alive to this express situation. Investigations are now going on in Illinois, Montana, Minnesota, Iowa, Nebraska, Kansas, and Oklahoma; the commission of New Jersey has just made a ruling; in New York they are now investigating into the matter; and therefore I would deem it wise for the National Government to place around the express companies the same general character of restrictions as they undertake to impose upon the rail carrier.

Mr. BARTLETT. Now, outside of that, suppose, as we have already done in the Hepburn bill, we include the express companies with com-

mon carriers. Suppose this bill provides that the Interstate Commerce Commission shall fix the rates on express packages and determine what shall be reasonable; would not that help a great deal?

Mr. BARLOW. We apprehend that under the present law the Interstate Commerce Commission is empowered to entertain a complaint against the express companies as to the unreasonableness of their rates and make a finding and a rule, the same as affecting railway carriers.

Mr. BARTLETT. Have these people who you say are stirred up and aroused about the exorbitant charges made any complaint to the Interstate Commerce Commission as to the exorbitant charges of the express companies, with a view of the Interstate Commerce Commission passing on the reasonableness or unreasonableness of the rates?

Mr. BARLOW. The express business in this country is the closest—can I use the word “game?”

Mr. BARTLETT. I think you are right about it.

Mr. BARLOW. Yes; that has ever been played. They have made no reports; they have issued no tariffs, generally speaking. They have been a law to themselves. Now, we are seeking in Illinois—the Railway and Warehouse Commission, through our railroad commission, are seeking—to investigate and bring out the manner of conducting their business, and we have been embarrassed in every move at our almost utter inability to find out what the rates were, but we are making progress. Montana is investigating it, and other States, as I say, are investigating it. Now, I apprehend that when these investigations are completed, perhaps some of the western States may ask the Interstate Commerce Commission to then make an investigation which will be national in its scope.

Mr. STAFFORD. Why is it not to the interest of some of the large commercial houses who ship a great number of packages by express to petition the Interstate Commerce Commission, complaining that the rates charged by the express companies are unreasonable?

Mr. BARLOW. Why is it not to their interest?

Mr. STAFFORD. Yes.

Mr. BARLOW. It is; but we know so little about the express business. This year is the first time we have had statistics filed with the Interstate Commerce Commission. They have published no annual rates. We only know in Chicago the rates from Chicago, and we can only get those by going and applying to the agent for the rate we want. For instance, in our case in Illinois I was compelled to make out a list of the stations to which I wanted the express rate. I went to the agent, and some of them he could give me and others he said he would have to send on to New York to obtain. I finally obtained the rates, but it took me several weeks to do it.

The CHAIRMAN. That was recently?

Mr. BARLOW. Yes; the investigation is now going on.

The CHAIRMAN. Why could you not obtain those rates through the Interstate Commerce Commission.

Mr. BARLOW. Perhaps I did not think of that, Mr. Chairman.

The CHAIRMAN. They are all supposed to be on file there.

Mr. BARLOW. Yes; I suppose they are there. It did not come to me to do that.

Mr. ESCH. Some of the biggest express companies are not incorporated at all, are they?

Mr. BARLOW. The express companies claim to be companions, or something of that kind.

The CHAIRMAN. Joint stock associations.

Mr. BARLOW. Yes; joint stock associations; but they are common carriers, are they not?

Mr. BARTLETT. Yes; no doubt about that.

Mr. BARLOW. And if they are, it is quite immaterial what their form of incorporation is, I think. I can not discuss that as a lawyer.

Mr. BARTLETT. There is no doubt about their being common carriers.

Mr. ESCH. There is another question I would like to ask. These express companies exchange with other companies on the through shipment of a parcel, do they not?

Mr. BARLOW. Wherever it is to their interest to do so, and necessary to complete a through carriage, yes.

Mr. ESCH. Where they do make that interchange, what is the practice with reference to the charge?

Mr. BARLOW. In some instances it is what we call the combination of two charges. In other instances through rates are published. There is no special practice, no fixed practice. It is whatever the carriers can mutually agree upon; but in a majority of the cases the combination of the two rates would hold, except where some express company may come in and fix a through rate that would compel the other two companies joining together to meet. But there is no fixed practice as to the community of interest between them.

Mr. ESCH. As a matter of fact there is no competition between them?

Mr. BARLOW. We have not been able to discover it.

Mr. ESCH. They let it out by contract, do they not? The railroad company gets one company and only one company over its entire system?

Mr. BARLOW. I could explain to you the relations between the express companies and the railroads, if you would like me to do so. I have made lots of the contracts between the express companies and railroads.

Mr. ESCH. I think if you are qualified we had better get the information.

Mr. BARLOW. Generally speaking, the contracts between express companies and railroad companies are made based upon the express company paying to the railway company a percentage of their gross earnings, that is a percentage of the gross earnings of the express company made on the system contracting. The average percentage now paid by the express companies is 55 per cent. In other words, the express companies pay to the railroad companies 55 per cent of the gross earnings made on the line contracting. Now, our position is that that is an improper basis for a contract. I would be glad to discuss that if you care to have me do so, but it is not exactly in line with what you asked. The arrangements provide that the railroad companies shall furnish to the express companies certain limited facilities at all terminals for the receipt and handling of their business on the cars; it provides that the local agents for the railroads shall act as agents for the express companies, and such a local agent is paid generally 10 per cent commission on the earnings of the express company at his station. It provides, further, that the railway shall fur-

nish all the equipment, cars, etc., and that the express company may have the joint use of the employees of the railway company where necessary to the successful conduct of the express business. Therefore, on local trains, where the baggage man acts jointly as express messenger, the express company would pay perhaps one-third of the salary of the baggageman. The contracts are made for five, ten, fifteen, and, in some instances, ninety-nine years. There is very little competition in bidding, one express company versus another. It is generally understood that the American Express Company is a New York Central Railroad institution. That is the accepted idea. The Adams Express Company is a Pennsylvania Railroad institution, and the Pacific Express Company is owned by five railroads—all of its capital stock—and there was a bonus given the railroad in addition to the 55 per cent, for the exclusive privilege of doing the business.

Mr. RUSSELL. Do you know what roads own the Pacific Express Company?

Mr. BARLOW. The Wabash, the Missouri Pacific, the St. Louis, Iron Mountain and Southern, the Union Pacific, and a fifth one—

Mr. RUSSELL. The St. Louis and Southwestern?

Mr. BARLOW. I have forgotten. The Adams Express Company is generally looked upon as a Pennsylvania institution. The Pacific Express Company is owned by the five companies I have mentioned. The United States Express Company is generally looked upon as a Baltimore and Ohio institution. They have a long-term contract with the Baltimore and Ohio Railroad Company, and that is substantially, speaking from my point of view, the foundation of the United States Express Company.

Mr. KNOWLAND. How about the Wells-Fargo?

Mr. BARLOW. The Wells-Fargo Express Company is an evolution of the Pony Post. I understand that when they renewed their contract with the Southern Pacific, in addition to paying the Southern Pacific a certain percentage of their gross earnings, they gave them \$1,000,000 bonus for the privilege. The Wells-Fargo have a capital stock of \$8,000,000 or \$10,000,000, and only about \$5,000,000 is devoted to express business. The balance is devoted to banking, and they have been earning from 65 to 75 per cent on the amount of money they have invested.

Mr. KNOWLAND. On the express business or on the banking business?

Mr. BARLOW. On the express business, on the money they have invested in that business; now, a large portion—I will not say the major portion, but it is of record with the Interstate Commerce Commission.

Mr. KENNEDY. Do the railroad companies contract with the express companies to haul for them only?

Mr. BARLOW. Yes; they are exclusive contracts.

Mr. KENNEDY. No other person can do that business on the railroad?

Mr. BARLOW. Not to my knowledge.

Mr. KENNEDY. Do they agree not to serve any other express companies?

Mr. BARLOW. The contracts that I have made have been exclusive contracts. No one else is permitted to conduct an express business on the carrier's lines.

You will find, and I need not direct your attention to it, but I will, the interests of the owners of the express companies and of the rail-

roads are very closely interlocked, and our contention is that the basis of making these contracts, on the percentage system, is fundamentally wrong. If the express company desires more money—which they do desire, gentlemen, regardless of their dividends—if they want to increase the rate 10 cents per hundred pounds, you see they have to increase the rate about 25 cents per hundred pounds, because the railroad company takes 55 per cent of the increase. Now, it is never disclosed that the expense of conducting the business, so far as the railroad company is concerned, is any greater under one gross charge than it is under another, so that the system of making these contracts is fundamentally wrong.

Mr. BARTLETT. You say the American Express Company is a Pennsylvania institution?

Mr. BARLOW. No; the American Express Company is considered to be a New York Central interest.

Mr. STAFFORD. Can you generalize as to the length of haul in which the express companies compete with the Post-Office Department in the carriage of second-class, third-class, and fourth-class matter?

Mr. BARLOW. No, I can not. We undertook to disclose in the hearing on Tuesday, before I left Chicago, somewhat of that situation; but our attorneys thought it was not quite what we were after, and we did not pursue the matter. But they admitted that they did make their rates, and they sought to compete with the carriage of similar packages by mail. That is restricted, I understand, to packages weighing 18 or 24 ounces, on the basis of a cent an ounce, and I think that carries pretty nearly from Portland, Me., to Portland, Oreg.

Mr. STAFFORD. It has just been recently brought out in the hearings before the Post-Office Committee that the express companies, so far as second-class matter is concerned, only compete for a distance of 1,000 miles. There the rate is 1 cent a pound for a haul of a thousand miles, and half a cent if within the zone of a thousand miles, and beyond that all the heavy, bulky newspaper mail is deposited by the publishing houses in the mails.

Mr. BARLOW. That may be true. I am not competent to go further into that phase of the question.

Mr. KNOWLAND. Do you think that with the parcels post they could still compete and pay dividends? There seems to be considerable margin for dividend paying.

Mr. BARLOW. Really, if you want to ask that—

Mr. ADAMSON. The parcels post is just like second-class matter, so that if you make it pay five times what it is worth for short routes, I guess they would have a margin to cut, would they not?

Mr. ESCH. In view of the fact that railroad companies now provide the rolling stock, terminal facilities, and a great many of the agents, and are able to pay such large dividends, why is it that the railroads do not seek to do their own express business? Why should they surrender that great source of profit to other institutions?

Mr. BARLOW. I can only express my own opinion on that. I presume if I was the president of a railroad that had large holdings in an express company and could see more securities issued that way on which it could earn dividends without exciting suspicion of the public, I might think it wise to do that.

Mr. ADAMSON. It is like giving a man three or four spoons to dip in the same dish, is it not?

Mr. BARLOW. Yes; sometimes they all get it.

Mr. WASHBURN. Have you any idea what proportion of the stock of the express companies is owned by the railroads?

Mr. BARLOW. I think that is contained in the last report of the Department of Commerce and Labor on express companies. I have it at home. It is quite an important factor, and I noted here to-day in the Post something on that. I really take some stock in this newspaper suggestion, and you have all read it, because it has been in the air a long while. The Post says that the American has absorbed 49,500 shares of the Wells-Fargo stock, and will also take over Mrs. Harriman's personal holdings. We have accepted in Chicago the general absorption of the express companies practically to three companies. I am glad I am not testifying, because I am now simply expressing my opinion and the generally accepted opinion of the people in Chicago who have thought of it, that the United States and the Wells-Fargo would ultimately give way to the American in this northern territory.

Mr. BARTLETT. This article says that this purchase of the system does virtually combine the two?

Mr. BARLOW. Yes.

Mr. BARTLETT. And absorb the Wells-Fargo and the American?

Mr. BARLOW. So far as the Pacific is concerned, which operates over the so-called Gould system, of course that is all held by the railroads, and could be very easily exchanged, and the Adams, operating over the Pennsylvania now in the South, could easily absorb the Southern, and we would have two systems of express companies.

Mr. ESCH. In railroads reporting to the Interstate Commerce Commission their itemized receipts, have you noticed whether the itemized receipts they receive upon this percentage business on the gross earnings of the express companies are stated?

Mr. BARLOW. Generally in what we call our operating reports of railroads for the manager or president the miscellaneous earnings are divided. Miscellaneous earnings would be mail, express, excess baggage, and those things derived from and collateral to running trains. Whether they are segregated or separated from their reports to the Interstate Commerce Commission I do not know, but they are separated in the operating reports of the carriers, and could be easily obtained, and the earnings from the express business would be, in gross, the amount paid. But the Wells-Fargo vice-president testified on Tuesday in Chicago that the average percentage now paid by the express companies was 55 per cent.

Now, I would like to invite your attention to line 12 on page 14 to the words "within a reasonable time." I am inclined to urge upon this committee to insert a date, a time, there. "A reasonable time" is always subject to some interpretation. I might want a rate and it might be quoted in a week, and the carrier say that is a reasonable time. Generally speaking, in the large centers, or in any of the centers say of 2,500 population and above, the agent ought to be able to quote a rate within twenty minutes. Bear in mind that the shipments from so-called small places are limited in radius largely, and if there happens to be a factory at such a small place the agent is provided with the rates in the territory generally in which this factory distributes its goods; that is something that the agents take upon themselves. I should say that forty-eight hours would be a reasonable time to quote a rate there.

Mr. WASHBURN. Would not that prevent them getting your rate in twenty minutes, often?

Mr. BARLOW. Not necessarily, because often, or in the majority of centers, we go right to the agent that is authorized to quote a rate. All the great houses, and most of the small houses, have some one who looks after the traffic, and they go right to the headquarters and ask for the rate and stay there until it is quoted.

Mr. WASHBURN. You do not think if the railroad companies do that, that the express companies in all cases should?

Mr. BARLOW. I believe that the express companies should publish a tariff and put it in the hands of their agents, and if it does cost a little money it is a duty that they owe to tell us what the price of their commodity is. I think that is fair.

Mr. WASHBURN. Do you think a limitation of the time here would create a tendency on the part of the company to delay in giving a rate?

Mr. BARLOW. No; I do not want to feel that the carriers would delay.

Mr. WASHBURN. Then why do you want to put in a definite time?

Mr. BARLOW. Because some situation may arise where it would be desirable to have it.

Mr. ADAMSON. Do you not think that where there is a maximum amount of salary fixed, or a maximum date allowed in time, there is a general disposition to take the maximum as the rule of action?

Mr. BARLOW. I would not say there was a general disposition. I should say that that might obtain.

Mr. ADAMSON. That is the tendency, is it not?

Mr. BARLOW. Yes; if we are pulling apart instead of together.

Mr. ADAMSON. If you were pulling together you would not need any compulsion.

Mr. BARLOW. Yes, I think so; because compulsion often makes us pull together.

The CHAIRMAN. Mr. Barlow, I assume that on very simple rates there is very little difficulty about procuring the rates?

Mr. BARLOW. No, very little.

The CHAIRMAN. And as a rule the man who is shipping constantly knows the rates to most of the points to which he ships?

Mr. BARLOW. Yes, sir.

The CHAIRMAN. But you take a rate where there is some complication either about the rate or about the terms of delivery or various other things that enter into the question of rates in the schedules—complications; do you think it would be practicable in all cases to ascertain the rate within forty-eight hours?

Mr. BARLOW. Why, gentlemen, what we shippers are wishing for is simplicity. Unfortunately we only get simplicity under coercive measures, sometimes, and if the carriers will simplify their tariffs we ought to get rates not only promptly but correctly. But bear in mind these men, myself also, Mr. Lincoln, all of us, have been saturated with one way of doing business, and some way or other we are not prepared to make a radical departure. The Interstate Commerce Commission, I think, ultimately will bring that out, and we will abandon the old, antiquated methods which we forsake with such great reluctance, and simplify. Do you know, there is a desire in the hearts of some men to kind of mystify their profession?

The CHAIRMAN. I know, but I was trying to get information, and was not on the question of mystification, on which I would probably agree with you. If your purpose in advocating this is to bring about a radical departure in the method of making rates, that we ought to have disclosed to us; and we are assuming, at least I am, for the present, that we are dealing with the existing method of making rates, and that is what you want to deal with. Will it be practicable, in your judgment, with the existing methods of rate making and with the complications that exist in reference not only as to the rates, but as to the methods of receiving freight and delivering freight, in all cases to determine the rate at the station of origin within forty-eight hours?

Mr. BARLOW. I doubt it, under the present conditions. There may be some cases arise where it will take two or three days to get a rate under present conditions. But shall we have in mind some measure that will expedite the simplicity of the situation? Shall we have that in mind?

The CHAIRMAN. We are not discussing that matter yet.

Mr. BARLOW. While I intimate certain difficulties that may arise under that broad language, "a reasonable time," yet I must confess I have some doubts as to the wisdom of just fixing the time now. We will come to that later, I think; and maybe this is the time to approach it. You men are wiser than I am in that respect. I simply invite your attention to it.

Taking up paragraph 9, page 16, line 4, I read:

or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers affecting such rates.

May I suggest to the committee that they consider cutting out the words "affecting such rates?"

Mr. TOWNSEND. I did not get the place from which you were reading.

Mr. BARLOW. Page 16, line 4, and the same language is used on page 17, line 15, the language there being "affecting any rate, fare, or charge."

There are rules and regulations and practices of railroads that do not affect the charge or rate. That is particularly illustrated in this so-called car-distribution case which the Supreme Court has just decided. There it was a rule of practice not affecting the earnings of the carrier, nor affecting the rates, charges, or classifications, but it was a rule of practice. We wish to question the reasonableness of rules and practices of the carrier, whether they affect exactly the measure of the charge or not.

The CHAIRMAN. But in order to do that properly you have got to make also an amendment to section 1, which is not covered by this.

Mr. BARLOW. Yes.

The CHAIRMAN. Which you will find in the Mann Bill.

Mr. BARLOW. I do. Now, I think it is worthy of careful consideration whether consideration of the reasonableness of rates and practices, and so forth, should be confined exclusively to those regulations and practices which affect the charges and rates, because many regulations and practices do not affect the rates of charges but do affect the pocket of the shipper, and a practice or regulation may be unreasonable.

The CHAIRMAN. If we give to the Interstate Commerce Commission power to make orders in regard to the railroads doing interstate-commerce business, after hearing, is there any reason why we should not give them full power over that question as to any regulation or practice or rate made by the railroad company?

Mr. BARLOW. No, and I think you should; and I might say, Mr. Chairman, the more you do it the better for the carrier and the better for the shipper.

The CHAIRMAN. For both?

Mr. BARLOW. Yes.

The CHAIRMAN. Would it not tend to a simplification of the regulations and the practice both, as well as of rates and tariffs?

Mr. BARLOW. Undoubtedly.

The CHAIRMAN. Is not that to the interest of both the carrier and the shipper?

Mr. BARLOW. Undoubtedly.

The CHAIRMAN. And the public?

Mr. BARLOW. Simplicity and publicity are the two things.

Mr. ADAMSON. Why would it not meet your demands for us to leave in the discretion of the Interstate Commerce Commission the regulation as to giving you notice about the time of the stockholders' meetings also, and that other matter you were speaking about as to the time when they should furnish you a rate under different circumstances?

Mr. BARLOW. On the assumption that all information given to the Interstate Commerce Commission as provided by law is public property, I think it is fair for the shippers to go to the place where that information is published, and not ask that the carriers go to the trouble of notifying us.

Mr. ADAMSON. That is not the question I asked you. The question I asked you is this: Is it not sufficient to empower the Interstate Commerce Commission to make these regulations as to the time within which they should furnish you rates, and the other matter, both, instead of our making it positive, definite law?

Mr. BARLOW. I believe as far as possible we should leave in the hands of the carriers the right to establish their rules and regulations, and so forth.

Mr. ADAMSON. But you are asking us here to pass a law about certain things.

Mr. BARLOW. We are.

Mr. ADAMSON. Why can not we say in the law that the Interstate Commerce Commission shall make these regulations, instead of our making it positive law?

Mr. BARLOW. Well, I feel that in many instances it is wiser for the Congress to say what they want than to leave the absolute discretion to some other body, on such a very important measure.

Mr. ADAMSON. Is this anything vital and special, different from the other things that are now placed in their discretion?

Mr. BARLOW. Discussing the very point under immediate consideration it says:

Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge.

Mr. ADAMSON. I understand all that.

Mr. BARLOW. That restricts the commission to the consideration of such practices as affect the rates, fare, or charge.

Mr. ADAMSON. I understand that, but while you are on that subject, I ask you if there is any reason why you should not go back to the other two matters you have been talking about and give the commission discretion to make regulations about them.

Mr. BARLOW. I think, in my judgment, so far as that is practicable, and so far as the committee and Congress has the right, it should declare its intent and purpose, rather leave it entirely discretionary with some other body.

Mr. ADAMSON. Why should not the commission——

Mr. BARLOW. Because in that way we involve the question. Gentlemen, we are facing the greatest problem that this country or the world has ever faced, the transportation problem, and we can not solve it with a commission, and it is not safe always to leave wholly discretionary powers in the hands of a commission, provided Congress is perfectly clear as to what they want to do.

Mr. ADAMSON. We have placed great power already over commerce in the hands of the Interstate Commerce Commission. You are here on two little minor matters, incidental to commerce, which I doubt very much whether we ought to fool with at all or not, and I ask you if, instead of our legislating to fix the time within which the carrier may be allowed to make a rate, we can not trust the determination of that question to the Interstate Commerce Commission, along with the others.

Mr. BARLOW. Answering you directly, perhaps that would be a good escape from differences of opinion, that this reasonable term shall be fixed by the Interstate Commerce Commission.

Mr. ADAMSON. Is not the Interstate Commerce Commission supposed to be constituted of experts who study these questions and know something about the questions and have hearings on the questions, from both sides?

Mr. BARLOW. Yes.

Mr. ADAMSON. We sit here an hour or two for only a few days. We have other business. The Interstate Commerce Commission is charged with those duties.

The CHAIRMAN. You may proceed, if Mr. Adamson is through.

Mr. BARLOW. I desire to invite your attention to page 19. This same question was brought up by Mr. Lincoln. There is this peculiar wording on page 19, beginning on line 12:

delivery for shipment two or more through routes shall be then duly established and for which a through rate shall have been fixed as in this act provided.

I want to support Mr. Lincoln in his suggestions in reference to that, that it should be published and filed or fixed; and there should be a comma inserted after "fixed," so that it will not or may not be held that the use of the word "fixed" is not broad enough to cover the fixing of the rates by the carriers, and that it refers to the rates that may be fixed wholly by the commission.

The CHAIRMAN. Have you read Mr. Lincoln's testimony on that subject?

Mr. BARLOW. Yes.

The CHAIRMAN. As printed?

Mr. BARLOW. Yes.

The CHAIRMAN. In the hearings?

Mr. BARLOW. Yes; that is a question which our attorneys brought up, that it might be susceptible of two interpretations.

We come now to the question of the right of the shipper to route his freight, and I was asked by the Committee of the National Industrial Traffic League to deal specially with that phase of this bill. A question has been asked, of what interest is this right to the shipper?

The CHAIRMAN. Have you prepared an argument on that, Mr. Barlow?

Mr. BARLOW. I have, but it is so badly written that nobody can read it but myself.

The CHAIRMAN. I was going to suggest that perhaps it might be well to let you finish your argument before you are interrupted by questions by the committee, and then they will have full opportunity to ask questions.

Mr. BARLOW. I should much prefer that. By the shipper I mean the consignor or the consignee, or in other words, the person who under the terms of sale or purchase is the owner of the property while in transit. We contend that there is a tangible commercial and financial interest to the shipper in the right to direct the movement of his property.

Every railway has upon its rails more or less cars belonging to various other companies which may be used in loading to final destination. Cars belonging to one road can not be routed to another but must be loaded or returned empty to the lines owning them. To illustrate, there are nine roads operating between the Mississippi and Missouri rivers. A shipper located, say, at Pittsburg, may elect to use any one of these nine roads, and the cars belonging to them which may be in the possession of, say, the Pennsylvania Company. He therefore has nine chances to secure a car, providing, as is often the case, the originating road objects or refuses to permit its cars to be loaded to points beyond its own rails. If, on the contrary, the originating road controls the absolute routing beyond its own rails, and elects, as it may under the right to route, that shipments must go via a certain route, the shipper is restricted to the use of cars of that one line. The probability is, therefore, that there will be delays under such conditions as one is to nine; or, if they compel the shipper to submit to the transfer of his property at connecting lines when a refusal of the permission to let the car go through, then the shipper must suffer the possible attending damage to his property by reason of transfer or delay at the transfer points. It would add, in my judgment, to the expense of the shipper, by delaying his property, to wit, by reason of shorter distances or superior train service, a certain route between two given points may make 12, 24, or even 48 hours better time. Should the shipper be deprived of the right to direct the routing of his freight, and the carrier elect to send the freight via some more circuitous route, then the delay attendant thereupon may be of substantial damage to the shipper.

In considering this we must consider climatic conditions. The shipper may find his freight moving via a southern route that by reason of climatic conditions he may very much prefer to have move via a northern route. It may be claimed the carrier is obligated to select the best route; but I ask, why subject the judgment of the shipper to that of the carrier when the actual knowledge the carrier

has of the property being in his possession is confined to a very few unimportant subordinate employees. The knowledge of the route the property is to take is of valuable interest to the shipper. To illustrate, the shipper is able by knowing the route which the freight takes to expedite its movement. He is in constant touch with its progress across the country. The agents of the various lines transporting the freight take an official as well as a personal interest in expediting the movement. He has the right to stop his freight in transit; a legal right under certain restrictions, or the right as a matter of courtesy granted to him by the carrier. Without the knowledge of the whereabouts of the property he must deal exclusively with the originating line. If the owner of the property lives in Omaha, and the shipment originates in New England and is destined to Salt Lake, which, as a matter of illustration, is not an unusual procedure, the owner of the property without knowledge of its whereabouts is entirely at sea, and confusion follows.

Again, the shipper must arrange to receive and promptly take care of and dispose of his property at destination. He may desire delivery to certain warehouses or elevators. He may desire delivery on certain team tracks. Now, it is a well-known fact that you can not compel one carrier to switch for another carrier free; he is entitled to charge a reasonable charge. It is a well-known fact that you can not compel one carrier to devote to the general service of another carrier team tracks and private sidings—at least, not free. He must have a reasonable compensation. If the shipper orders a shipment from New York to Chicago, he asks the Lehigh Valley to deliver that to the Grand Trunk at Niagara Falls, and the Lehigh Valley delivers to the Lake Shore; the receiver of the freight in Chicago who has his warehouse on the Grand Trunk may be compelled to pay a switching charge. It may be the shipper desires a Grand Trunk team-track delivery, because it is 12 or 15 miles, or 5 miles, nearer the point of delivery than it would be if the property came in over the Michigan Central. Now, under circumstances of that kind, the shipper must team his freight or pay a switching charge. Therefore, he should have the right in the interest of economy to designate the route which he desires his property to take.

Again, it will create and maintain unnatural and unsatisfactory business relations, by compelling the shipper to patronize railroads, who, first, may be in bad physical condition, second, who are notoriously slow and neglectful in the payment of claims for damages, losses, and overcharges; third, who may already owe the shipper large sums of money for damages, overcharges, and so forth; fourth, whose officials may be officially or personally objectionable to the shipper; fifth, conferring upon the originating route the right to say to the shipper: "Regardless of your convictions, or past relations, we propose that you shall patronize a certain road at our option." In thousands of transactions the right to route the freight is a valuable and oftentimes a controlling factor, that should enure to the benefit of the buyer and seller of the property and not the carrier. To do otherwise might discriminate against localities as well as individuals. To illustrate, a prospective purchaser may go to Mansfield, Ohio, to buy a certain commodity produced in that market. He may be told that if he ships Pennsylvania to Omaha his business will go northwest. It may be a matter of economy, either in time, switching service, or

delivery on team tracks, for him to have that billed Northwestern. He may go to Dayton and find that he can purchase the same commodity at Dayton, and at substantially the same price, and ship it over the Northwestern road, the road he desires. That would depend largely, but not entirely, upon the instructions which the various agents had, either at the point of origin or the junction point, in the distribution of the traffic between the carriers of the given commodity on which he may desire to ship.

Many concerns are necessarily required to divide their traffic between the railroads, based upon the amount of raw material which the companies contribute to the industry, and in many instances the companies contributing raw material to an industrial plant have no direct connection with the plant. They naturally say to the manufacturer: "If we permit you to enjoy the raw material from our road, we expect that we shall enjoy a reasonable proportion of the manufactured product." That is a fair request and it is generally enforced, and the shipper cheerfully acquiesces in it. Now, if the shipper can not undertake to route his business so that the line furnishing a reasonable proportion of his raw material shall enjoy some of the benefit of the output of his factory, then he may lose the benefit of the raw material and his factory be very greatly embarrassed. I know that to be the working relation all over the country. I was traffic manager for the General Paper Company, which the courts dissolved as a trust. In my capacity I handled—had supervision of—three or four million tons of freight a year. We obtained raw material for those great paper mills from all the railroads. We had to draw from all over the country to get raw material to support those mills. Naturally we undertook to divide the product of the raw material fairly among the roads that handled the material. We must have the material, and we thought it was fair. The only way we were able to do that was because we controlled the routing of our own freight.

It is unnecessary for me to say that the commerce of the country is originated by the shipper. It belongs to him originally. His capital and brains alone are interested in it. Such avenues of transportation as are open to him, be they two or a hundred, should be subject to his reasonable right of selection. The originating road either publishes through rates in connection with other roads or quotes through rates with them. The Pennsylvania Company, for illustration, are parties to endless numbers of through rates in connection with various other roads, and this through a widely scattered territory. Where through tariffs are not published, they quote through rates and create and maintain satisfactory and agreeable arrangements for receiving and delivering business with those other lines. The shipper at Pittsburg will be quoted rates to the Missouri River in connection with all the nine lines operating between the two great rivers, and there are in existence mutually agreeable arrangements between the Pennsylvania and those other lines. Certainly, under these conditions, the shipper should have the right of choice as to the route. If he elects to ship via roundabout routes by which through rates do not make or apply, or are not published, then he should do so at his peril.

Answering the objections raised by the carriers in reference to this so-called right to route the freight, I say first under section 20 of the so-called Carmack amendment to the interstate commerce act the

original carrier is presumed to be responsible to the shipper for the property from point of origin to destination. Under the present attitude of the carriers in respect to this provision of the act the objection in my opinion is not well taken; it is a well-known fact that the carriers have refused to recognize that section of the law and still insist on restricting their liability to their own rails. Again, it is a well-known fact that substantially all carriers have adjudged this provision of the act to be unconstitutional.

Second, it will be contended that if the Interstate Commerce Commission has the power to establish through routes and divisions, the carriers should have the authority to select the route; otherwise they may be compelled to do business with irresponsible carriers. In my judgment this reasoning is not logical. What possible benefit can accrue to anyone by the opening of joint routes under conditions existing when the carriers control the routing? The commission may open new joint routes, but they can not compel traffic to move by them. The new route can not successfully solicit business from the shipper. It would be a stupid waste of time, energy, and money, as the shipper, having no voice in the routing, could not patronize the new routed line, if he desired to do so, the power resting wholly with the originating line or railway, who could not be forced to deliver traffic to the new route. You have, therefore, the new route, but it is powerless to help itself or provide any increased transportation facilities for the shipper. The authority conferred upon the commission would be, therefore, absolutely barren of result. In other words, you can open your route, but you preclude the possibility of its enjoying any business. Those two go together, inseparably. The opening of new through routes, through rates, and joint arrangements must necessarily be predicated upon the right of the shipper to do business with those new routes. Otherwise they absolutely bring no benefit to the shipping public. We men, shippers, who live in the large centers, have no special fear that we will immediately suffer from the so-called right to route our freight. In Chicago we have 25 railroads, more or less, to whom we can deliver our freight; but will you kindly direct your attention to the shipper who is located, say, at a point where there is only one railroad.

Again, the right to route the freight in the hands of the carriers permits them to rely on each other for traffic rather than upon the shipper who produces the traffic, which in my judgment is an unnatural condition. Destroy in the shipper the right to route his freight, and there exists, substantially speaking, no relation between the shipper and the carrier. That is based upon the fundamentals, that one man produces and owns the property, and the other is the carrier to take it to its destination. The shipper is reduced to producing the freight and paying the bills, that is all. In my opinion, if the carriers are once assured and convinced that they have the absolute right to route the freight regardless of the shipper's directions to the contrary, they will ultimately, if not quickly, exercise that right, any contention to the contrary notwithstanding. We do not need to be told or convinced that even the best men exercise the power they possess, especially when they are convinced or think it is for the benefit of themselves or the interests they serve. With that caution born of doubt, some of the carriers are now endeavoring to enforce the new

claim. While the theory of the control of routing was but a suggestion a few months ago, it is now being put forth by some bolder spirits as a fundamental right in the carrier. I think we may safely and properly assume that if the roads control the loaves and fishes they must and will, in the very nature of things, work out a plan for dividing them. We may, therefore, confidently predict that no other outcome is possible. The following will be the result: A gigantic pool of all the interchanged commerce between the various lines. It will not change the inevitable to deny this. It is the only logical outcome of the situation. Perhaps we ought not to use the term "pool," because pools of money or tonnage are prohibited by law; but I submit if the roads control the routing of the traffic, they must and will, in the very nature of things, find a way of equitably dividing it among themselves. When they do, the so-called small railroads will be absolutely at the mercy of the great carriers. They will obey the mandates of the greater corporations or have no business. If the larger corporations desire to buy them up, taking the traffic away from them will permit them to absorb them at their own price.

Again, all the railroads will withdraw their agencies at points other than their termini. It would be absurd for the Chicago and Northwestern Railway, terminating in Chicago, to maintain agencies in New York, Pittsburg, Buffalo, and Philadelphia, if the efforts of those men were devoid of all results, as they would be if the carrier controlled the routing of the freight. Now, this is no visionary dream; this is one of the purposes of the control of freight. I have discussed it many times when I was an executive officer of a railroad. The maintenance of these agencies through the eastern and western country is of great value and interest to the shipper. The agent keeps the shipper in touch with the progress of his goods across the country, he takes an interest in the property until it reaches final destination. The agent of the Union Pacific Railroad in New York, if you please, or in Chicago, is thoroughly conversant with the industrial commercial situation on his railroad, and he gives valuable information to the commerce of Chicago and other cities. He is there to secure traffic for his road, but if he can not secure it, if he must depend wholly on his connecting lines, then he will be eliminated. What will be the result? Probably 10,000 highly specialized men are employed as general agents, commercial agents, throughout the country. The majority of them have reached, or have passed, the youth of their life. They are highly specialized official workers in one line of activity. If their occupation is gone it will be difficult for them to secure employment; and I repeat this is a part of the programme, in my judgment, to secure the right to route the freight.

Now, gentlemen, giving the right to route the freight is not conferring upon the shipper something that he never enjoyed. The right to route the freight is a right which the shipper has enjoyed ever since railroading became the great transportation factor in this country. The division of traffic between the carriers was always restricted to the unconsigned freight. To illustrate, when I was general freight agent of the Santa Fe road, instructions were, Kansas City, to divide the unconsigned freight thus and thus each week between the various roads, based upon the amount of tonnage which we received from the roads east of the river for the week preceding, and therefore we worked out an equitable division of the unconsigned

freight; but the right of routing by the shipper was inviolate, and we never undertook to disturb it. It is a right that we have long enjoyed. Nobody has ever questioned it. No extraordinarily unsatisfactory conditions have ever been created under that right, and no one supposed that we did not legally possess the right until the decision of the United States Supreme Court in the citrus-fruit case.

(At 12 o'clock m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess, the committee resumed its session, Hon. I. P. Wanger in the chair.

STATEMENT OF MR. HENRY C. BARLOW—Continued.

Mr. BARLOW. Mr. Chairman and gentlemen of the committee: In closing my direct statements in reference to that phase of the bill which seeks to confer upon the shipper the right to route his freight subject to reasonable regulations, I wish to conclude as follows:

I am convinced that inasmuch as originally the power to make rates was lodged in the hands of the transportation companies, and to a certain extent that power has now been curtailed, the carriers seek to regain somewhat of a supremacy over the shipper by an attempt to lodge in them the right to route the freight. I repeat, it will not do to deny that a gigantic pool of tonnage is the logical outcome of conferring on the carriers the right to route the freight. That must come, whether the managers of the carriers desire it or not. If they control the property while in transportation, they must divide it. Again, it will not do to say that all the agencies outside of the termini of these great corporations will not be abandoned. That is the only logical conclusion. In my judgment, the placing of the control of the routing in the hands of the carrier is a most harmful, and, I may say, vicious attempt to subject the shippers of this country to what I denominate transportation slavery.

There are a few other features which I should like to deal with; but if any questions arise on this point I shall be glad to answer them now.

Mr. WASHBURN. Before you leave that phase of the case, I should like to ask this question: You referred this morning to the citrus fruit case. Do you mind repeating briefly on what point you cited that case?

Mr. BARLOW. As I recall—I am sorry my memory fails me in that matter—that was a case brought by the citrus-fruit shippers, who requested the right to route their shipments from California to all eastern territory. The case, as I recall, went to the United States Supreme Court, and it was held that as to the intermediate routing, at least, and under the exact conditions disclosed in that case, the carriers had the power to determine the routing of the property.

Mr. WASHBURN. I have the case here. I did not mean to ask you to give a digest of the case; but I wanted to refresh my memory as to just what point you cited the case upon.

Mr. BARLOW. In this connection: The right to route the freight is a right that has always been recognized by the carrier as vested in the shipper; and up to this decision no attempt had been made on the part of the carriers to take from the shipper the right which he

had possessed, you might say, during the whole transportation history of the country.

Mr. WASHBURN. Merely for the sake of getting the case into the record, I will state that it is in 200 United States, page 536. I will read briefly from the syllabus.

Mr. TOWNSEND. What is the case?

Mr. WASHBURN. It is the case of the Southern Pacific Company against the Interstate Commerce Commission.

Mr. TOWNSEND. Oh, yes; the citrus-fruit case.

Mr. WASHBURN (reading):

The Southern Pacific and other railroads published a guaranteed through rate on citrus fruits from California to the Atlantic seaboard. The shippers availing of this rate routed the goods themselves from the terminals of the initial carriers, and illegally obtained rebates for the routing from the connecting carriers. To prevent this—and the action was successful—the initial carriers republished the rate, reserving the right to route the goods beyond their own terminals. On complaint of shippers, the Interstate Commerce Commission ordered the initial carriers to desist from enforcing the new rule, holding that it violated section 3 of the interstate commerce act.

That the Supreme Court overruled. They overruled the commissioners on the appeal, and stated, among other things:

The question of joint through rates is, under the act, one of agreement between the companies and under their control, and nothing in the act prevents an initial carrier guaranteeing a through rate to reserve in its published notice thereof the right to route the goods beyond its own terminal.

Then the opinion, quoting from the opinion of the commission, says:

While the initial carriers do not always route as requested by the shippers, they generally comply with their request.

And then, at another place in the opinion:

It is the power to route, which rests with the initial carrier, that really takes away the motive for a rebate in the manner indicated, and therefore the granting of the request of the shipper as to a particular route may be, and is, generally conceded without danger that the rebate business may be again practiced.

The important facts that control the situation are that the carrier need not agree to carry beyond its own road, and may agree upon joint through tariff rates, or not, as seems best for its own interests. Having these rights of contract, the carrier may make such terms as it pleases, at least so long as they are reasonable and do not otherwise violate the law.

Then, in another place:

We are of opinion, however, that the evidence is substantially one way, and that is that the arrangement for routing was to break up rebating, and that it has been accomplished.

I understand that what you seek is legislation which shall, in effect, overrule this decision of the Supreme Court—I mean to say, make new law on this subject?

Mr. BARLOW. Yes, sir.

Mr. WASHBURN. That is so; is it not?

Mr. BARLOW. Yes, sir.

Mr. WASHBURN. That is all I care to say. I merely wanted to get this in the record; that is all.

Mr. ADAMSON. When the initial carrier advertises a rate, reserving the right to route, and the shipper delivers the goods on that advertisement, it becomes a contract, does it not, that the initial carrier shall route?

Mr. WASHBURN. And the Supreme Court evidently found that in this case the carrier was obliged to assume the responsibility for routing the goods in order to break up the practice of rebating on this particular line of shipments.

Mr. BARLOW. I say "yes," on broad grounds. Whatever right or privilege the shipper had previous to that decision, we ask Congress to restore to us—not that we can get rebates, however, because I believe the business interests of this country are sick and tired and disgusted with the rebate principle.

Mr. WASHBURN. No; I do not charge that at all.

Mr. ESCH. It is to be remembered that that case was argued in January, 1906, before the Hepburn Act went into effect.

Mr. BARLOW. Yes. I think the practice is broken up, and we all say "Amen" to it. We would not return to our vomit if we could. As I understand it, in the absence of some legislation, and by reason of the conditions which the carriers had disclosed in that case, the court made that decision; and it is within the power of Congress to restore to us whatever privileges and rights we enjoyed for a great many years.

Mr. WASHBURN. There is only one further point I want to make. It appears in this case that the court found that the request of the shipper to route his goods was usually complied with by the railroads.

Mr. BARLOW. Yes, sir.

Mr. WASHBURN. Now let me ask you if, in your experience, you have found that to be so?

Mr. BARLOW. Yes, sir; some of the southern lines are now gradually enforcing the right to route the freight. The transcontinental lines are doing so to a large extent, so far as a certain class of business is concerned. We assume, and I think properly, that, in the evolution of the apparent power conferred upon the carriers in that case, ultimately the right to route lying in the hands of the shipper will be very greatly and materially restricted. That will not be the case so much in the great centers, as I said this morning, where we have the natural physical right of selecting our carrier, but in those smaller places where competition does not exist or is very greatly restricted.

Now will you indulge me while I explain just what I mean by that? Let us take the case of Kenosha, Wis. You are familiar with that. There are large manufactories there. It depends entirely upon Lake Michigan, and principally upon the Chicago and Northwestern Railroad for an outlet. The Lake service there is practically nil, although the boats do operate a little. So the industries at Kenosha depend entirely upon the Northwestern Railway. The shipper is able, by negotiations, to extend the possibilities of his market in connection with all the other roads, other than the Northwestern. He is able to secure cars oftentimes when the Northwestern Railroad can not secure them. He is able to extend his markets, the territory in which he can purchase. There is no incentive in, say, the Santa Fe Company opening their line to the manufacturers at Kenosha—and there are many of them—unless they can get some business from Kenosha; and if it lies wholly in the power of the Northwestern road to give the business to the Santa Fe, the assumption is that they will not receive sufficient to justify them in opening their great territory to those manufacturing concerns. But the development and opening of that

territory is of great importance to the development of the industries of Kenosha.

Mr. TOWNSEND. I want to ask you a question there. This decision to which Congressman Washburn has referred was before the Hepburn law gave the commission power to establish through routes?

Mr. BARLOW. Yes, sir.

Mr. TOWNSEND. And before, in fact, the enactment of the Hepburn law?

Mr. BARLOW. Yes, sir.

Mr. WASHBURN. It was on February 26, 1906.

Mr. TOWNSEND. Yes; do you admit that under the old system, prior to that decision and prior to the Hepburn law, the shipper could use this right of shipment as a means for obtaining rebates?

Mr. BARLOW. I assume that certain carriers did in the past buy business by rebates; and in the buying of it they expected, of course, that the business would pass over their rails, else they could not afford to buy it.

Mr. WASHBURN. The court found that to be the fact in this case.

Mr. BARLOW. That must have been true; yes, sir.

Mr. TOWNSEND. In asking that I was leading up to another question. You said that when you were connected with the paper business you were able to make certain arrangements if you had this right to route your freight. Did you do that? I am not asking you for any other purpose than to obtain information, and you need not answer the question unless you feel like it, because it is simply for the purpose of getting information.

Mr. BARLOW. I understand.

Mr. TOWNSEND. Did you do that by getting a special or secret rate from the railroad company, such as is condemned in that decision?

Mr. BARLOW. No, sir; never. I will tell you what we did do, if you care to know. First, the policy of the corporation was not to accept passes or rebates. But we did open from all of our mills in Wisconsin, which were local to the various Wisconsin roads, the enormous territory in the southwest and in the southeast on as favorable a basis of open, published tariff rates as ruled, say, from New England mills. We were able to do that because we could sell business in that territory when we got the rates, and furnish the roads some tonnage. They did not rely wholly upon the originating line, but upon our good faith, if they made the rates in a proper way, in seeing that they would get some traffic. Therefore that right lodged in us permitted us to open enormous territories for the sale of paper from the mills that we never enjoyed before. To illustrate: The rate from Rumford Falls, Me., on paper to all Texas common points was 6½ cents per hundred pounds less than the rate from Appleton, Wis. Our ability to furnish tonnage to the roads and supply that business encouraged the roads which did not reach the mill to join in reasonable arrangements with the other roads, predicated wholly upon their ability to get some business, which we were able to give them.

Mr. TOWNSEND. That was possible largely because of the size of your concern; was it not?

Mr. BARLOW. Yes, sir.

Mr. TOWNSEND. Now, take the converse of that: Would the shipper's right to route his freight enable him to form a trust or combination better than it would if the railroad company had the directing of it?

Mr. BARLOW. No; I think not. On the other hand, the right or power lodged in the carriers must make a combination. You can not avoid it. It is the logical outcome of placing such a right in the power of the carriers. As I said this morning, if the carriers control the loaves and fishes, they must find some way to divide them equitably.

Mr. STAFFORD. A moment ago you stated that prior to the decision referred to it was the practice for the railroads to observe the request of the shipper as to the routing of freight, and it was only in exceptional instances that it was not observed. In those cases where the request was not complied with, did the carrier ever give any reason for refusing to comply with the directions of the shipper?

Mr. BARLOW. Wherever in old practice a routed shipment was misrouted, the carriers almost invariably apologized when their attention was called to it.

Mr. ADAMSON. But did they usually give a valid reason for it?

Mr. BARLOW. Yes; they stated that it was an error on the part of some of their junction men, and it almost invariably proved to be a mistake. Now, further, let us take the case of business passing over, say, the Michigan Central into Chicago, consigned to the care of the Northwestern: If that car was diverted, it was almost the invariable rule for the Michigan Central to give the Northwestern another car to make good that one, and apologize to the shipper for diverting his property.

Mr. STAFFORD. There were never any reasons advanced on the grounds of inconvenience of connection at the junction point because of the change in the shipment?

Mr. BARLOW. No, sir; I never heard that reason given.

Mr. ADAMSON. I want to understand a little better the instance you gave there. I believe you referred to Kenosha, Wis. At any rate, you said there was a rate from Maine to Texas that was 6 cents a hundred cheaper than the rate from that local point to the same points in Texas. If I understood you correctly, you said that on the faith of getting some of your tonnage, which it was in your power to give them, the roads which did not touch at your point, but could make part of a line to Texas, were induced to make an arrangement with your initial line.

Mr. BARLOW. Yes.

Mr. ADAMSON. If they only did that in order to make a rate as cheap as the longer rate from Maine, there was not much rebating about that; was there?

Mr. BARLOW. There was no rebating at all. It was an open, published tariff.

Mr. ADAMSON. That looks like it was on the side of honesty.

Mr. BARLOW. It was. But the roads in the Southwest had never enjoyed the traffic from Wisconsin. The arrangement did not appear to be equitable. Therefore, through our cooperation with both the northern producing line and the southern consuming line this satisfactory mutual arrangement was built up.

Mr. ADAMSON. Unless the railroads are as apt, when they have the power of routing, to make that same fair and honest agreement to make their short haul as cheap as the longer one, you have about converted me to giving you the right to route the freight.

Mr. BARLOW. You may rest assured that if they have the power to route the freight they will conserve their own interests and not the

interests of the shipper. I say that advisedly, after thirty-five years' experience.

Mr. ADAMSON. Do you think that if the carriers between Kenosha and Texas possessed the power in the initial carrier to make the route, they would not be as likely to make a combination rate from there to Texas as the rate from Maine to Texas?

Mr. BARLOW. Certainly; if you operated a railroad you would not want a tariff alone—you would want some business. There is no use of having your offices flooded with tariffs that do not carry any business. The publication of a tariff is predicated upon the possibility of securing traffic at the rates therein named which are lawful and legal.

Mr. ADAMSON. Do you not think it is a mighty dangerous thing for the railroads to take men like you and Lincoln, and educate you for thirty or thirty-five years, and then let you off to go and fight on the other side and show the people how to get after them? [Laughter.]

Mr. BARLOW. I thank you for the compliment.

Mr. WASHBURN. Did you not say a few moments ago that you had never heard of a case where the railroad had declined to follow the request of the shipper as to routing?

Mr. BARLOW. In the old days, no. I do not mean by that that mistakes were not made.

Mr. WASHBURN. Oh, no; I understand that mistakes were made. Then my question would be this: If the railroads so uniformly conform to the wishes of the shipper, why is there any necessity for any affirmative legislation on the subject?

Mr. BARLOW. Because the assumption of the carriers under that decision is that it gives them the right to route the freight.

Mr. WASHBURN. But you say they have never exercised it.

Mr. BARLOW. They are now beginning the exercise of it. The southern tariffs now carry a provision that these rates are quoted, and the acceptance of them confers upon the carrier the right to route the freight. The transcontinental tariffs are that way. Such a proposition has been canvassed by other associations; but in the present delicate situation it is, perhaps, deemed wise not to carry it too far just now, but to let the system evolve.

Mr. WASHBURN. Do the railroads rely on this citrus-fruit case for their authority?

Mr. BARLOW. To a certain extent. I think some bolder spirits in the railroad world are now assuming that they always possessed that right, in view of the lack of any definite enactment into law that conferred the right upon the shipper; but that is only the progressive interpretation.

Mr. WASHBURN. Before you were translated into the higher realm of the shipper, the railroads never abused their right to route? I mean in the old days, as you say?

Mr. BARLOW. We tried not to.

Mr. ADAMSON. You might call Mr. Barlow a reformed railroad man. He has learned all the tricks, and then has gone on the other side. [Laughter.]

Mr. BARLOW. No; I do not pose as a reformer.

Mr. ESCH. In connection with this citrus-fruit case and this legislation, would you favor making an exception in the case of the carriage of perishable freight?

Mr. BARLOW. Mr. Esch, I am very much pleased with that paragraph just as it has been written. I think it is a very wise provision. I do not think the shippers should be harsh and unreasonable. The paragraph provides that reasonable exceptions and regulations shall be promulgated by the Interstate Commerce Commission. I think that is a wise provision—at least for the present. They will view every situation, and will undoubtedly, in their wisdom, issue tentative rules from time to time as it evolves and will work it out. We never had any trouble under the old way at all. The shipper and the carrier cooperated. The shipper had the right to route his freight; but there were exceptions where they both worked together, and mutually accorded to each other certain operating situations that required the shipper occasionally to waive his rights tentatively in the interest of just the situation that existed on that particular class of business at that particular time.

I can illustrate that by, say, shipments of melons from Indiana. We loaded, in a very short season, 4,000 or 5,000 carloads of melons that went all over the United States. We prepared for it, as some one stated yesterday; we tried to accumulate old cars that would not carry anything else. We generally had an arrangement with our connecting lines that there would be a give-and-take, and that these cars could to a certain extent be indiscriminately routed in such a way as to serve the best interests of the shipper and the originating line, and that it would equalize itself. The shipper understood to a certain extent that during that rush it would occasionally be impossible to ship a car the way he wanted it to go; and he acquiesced in it. But in the general operation he knew that the right was in him, and that we would respect it. I assume that under this paragraph the commission, in its wisdom, will fix reasonable restrictions; and I think that is a wise provision, now at least. Possibly we will evolve a better one later on.

Mr. TOWNSEND. I think perhaps you have made yourself clear; but I want to be very certain that the proposition which we have incorporated in this measure, of allowing the shipper to route his freight, will not result in anything in the nature of rebates to the shipper; in other words, that by permitting the exercise of that right we shall not go back to the conditions referred to in the citrus case.

Mr. BARLOW. I do not believe, Mr. Townsend, that the reputable shippers of this country would permit us to go back to that if we wanted to.

Mr. TOWNSEND. But I am not willing to rest it quite there.

Mr. BARLOW. I know you are not. But I see absolutely nothing in this right that would lead to a return to old conditions—nothing at all, Mr. Townsend. I have not the least fear of that.

Mr. ADAMSON. You stated this morning some exceptional instances (that is, although you did not state them as exceptional instances, they appeared so to me) of cases where there would be inconvenience, and expense, and drayage and switching charges at intermediate and at terminal points.

Mr. BARLOW. At terminal points.

Mr. ADAMSON. In what I would call exceptional cases like that, do not the railroads recognize those as good reasons for granting your request, if you make one?

Mr. BARLOW. Generally speaking, the restrictions on the right to route are very limited now. The carriers have not yet fully accepted

what they claim to be their right; but they are not imposing it upon the shipper. If I load in New York a carload of freight destined to Chicago, and route it, the carrier would undoubtedly now route it the way we asked him to.

Mr. ADAMSON. If they are not willing to give you the quickest route and the cheapest route and the safest route, there is not any doubt but what they ought to be compelled to do it. But those are the essential things; and I have been unable to find any particular interest to the shipper in selecting his route if the railroads will do those three things.

Mr. BARLOW. I hardly feel that necessity compels the shippers of the country to submit to the opinions of the carriers in every respect, as to just what the shippers really want.

Mr. ADAMSON. I never have run a railroad; but I ran a law office for about twenty years; and if a fellow came to me with his neck in a halter or his estate in jeopardy, and hired me, I asked him if he wanted me to run the case or if he was going to run it himself.

Mr. BARLOW. The shippers would like to run these things under reasonable control and regulations.

Mr. ESCH. Another question along the line of questions previously asked: Assuming that this bill is enacted and the shippers are given the right to route their freight, and a shipper does not exercise the right, should the initial carrier then be bound to ship over the route with the lowest rate?

Mr. BARLOW. I differ with some of my confrères on that point. I say no; if the shipper does not know the rate that he wants to enjoy, and he does not care how the shipment moves, then I believe it is proper for the carrier to select those things for him according to its best judgment. But where the shipper does know the rate, and does know how he wants his commodities transported, then they should be transported in that way.

Mr. ADAMSON. On the theory that what he does not know does not hurt him?

Mr. BARLOW. It does not until he finds it out, anyway; and then he has lost his rights, I should say.

Mr. ADAMSON. I believe that if it were necessary to vote on it, I would vote that it was the duty of the carrier to give him the cheapest route.

Mr. STAFFORD. I should like to ask you a hypothetical question, based upon the assumption that this bill is enacted into law, as to the effect that it would have on the better-maintained railroads. Take, for instance, the New York Central as compared with the West Shore Railroad, or the Lake Shore and Michigan Southern as compared with the Nickel Plate. We know that so far as passenger traffic is concerned there is a great difference. If the rates were the same for through traffic, what would be the choice among the general body of shippers as to the selection of routes where the service is superior, as in the case instanced?

Mr. BARLOW. Do you mean by that to ask what would operate on the mind of the shipper to cause him to select a certain route?

Mr. STAFFORD. Yes.

Mr. BARLOW. I tried to explain that somewhat this morning.

Mr. STAFFORD. Pardon me, if it has been covered.

Mr. TOWNSEND. I should like to hear that, myself.

Mr. BARLOW. There are a great many things that operate upon the mind of the shipper. Of course, you gentlemen are familiar with the fact that the rates are now substantially the same. I say "substantially" as having reference to what we call certain differential lines; by reason of physical conditions they are permitted to charge a little less than some standard rate; but the rates are all practically alike. Such being the case, the shipper is influenced by a great many things. He may have assumed certain obligations, as I stated this morning, in the securing of the raw material for his factory. The carrier may have said: "If I let you have raw material at a certain rate"—which is a very low rate, generally—"then I expect to get the finished product out, in order that the two rates added together may be reasonably compensatory to me." That may operate upon his mind. One road may give superior transportation facilities in the way of quicker time; or one road may have the reputation of handling freight with greater care than another.

Mr. TOWNSEND. But you get away from the other subject. I wanted to ask you about that when you were testifying this morning, but we agreed not to interrupt you. You say that in the case of raw material the manufacturer can perhaps make better rates with the carrier. He can not make any better than the published rate, can he?

Mr. BARLOW. Oh, no.

Mr. TOWNSEND. And that rate is practically the same in the case of all of the roads; is it not?

Mr. BARLOW. Oh, yes.

Mr. TOWNSEND. Then I do not quite understand how that can be used as an argument. If the railroad makes him a better rate on the raw material, I do not see how it can hope to compensate itself by the shipment of the finished product.

Mr. BARLOW. I will illustrate that, if you please, in a territory with which I am familiar. The so-called "Soo" line operates from St. Paul and Minneapolis through to Sault Ste. Marie. It runs through, or did run through, a very fine timber land. There was an abundance of spruce and a world of hemlock. It had one or two small paper mills on its road. The other paper mills in Wisconsin had been located at an early day where they were accessible to timber, either by water or by rail; but by reason of long years of operation they were constantly compelled to go farther away, farther away, farther away. The opening of the Soo line opened a new territory. The mills said to the Soo line: "We want your timber." The Soo line said: "Yes; but we must make you low rates on it, and it must pass off from our rails. We have built the road here to enjoy all the revenue which this timber would reasonably produce to us. If we make you these low rates, and let you extend your operations on to the Soo line, and take the timber from our road off onto the Wisconsin Central or the Northwestern or the St. Paul, then we want the Wisconsin Central and the Northwestern and the St. Paul to make an arrangement with us that will permit you to ship the product out, say, to Boston, New England points, or other points in connection with our line, in order that we may enjoy our full proportion of the higher rates on the manufactured product in consideration of our making you the low rates on the material."

The lines connecting immediately with the mills—the Northwestern and St. Paul if you please—were anxious to do that, because

they recognized the extreme necessity of the mills to get timber. They had these working arrangements with other roads through Milwaukee and Chicago; and they turned around and applied them out through the Soo line. We therefore were able to get this material, to keep the mills running, and to send enough of the freight over the Soo line to satisfy them, just as well as though the mills were located on their own road. Unless we could have done that we could not have gotten a pound of timber off of the Soo line. They would have reserved it for sawmills, or for some other purposes.

Mr. ESCH. And yet in the passage of the freight over the Soo line to Boston and New England points it would go over a foreign road, over which our commission would have no jurisdiction in the case of the determination of a rate?

Mr. BARLOW. That may be true; I only mentioned that as an illustration. But we do route a great deal of business over the Soo and down over the Pere Marquette line across St. Ignace and on the American lines—across that way. It is entirely optional with us.

Mr. ADAMSON. He did not know he was giving an illustration involving a foreign country.

Mr. BARLOW. Oh, that is only incidental to the illustration.

Mr. STAFFORD. But assume, in the case I instanced, that one road has much superior facilities for the shipment of freight and that the other is very poorly equipped, would not the result be that the best equipped line would get the majority of the traffic?

Mr. BARLOW. I think so.

Mr. STAFFORD. And yet in that case those lines which are virtually controlled to-day by the same system (one a passenger-carrying railroad and the other supposedly a freight-carrying railroad, with the passenger traffic as incidental traffic) would be bereft of the main freight business as at present carried on?

Mr. BARLOW. Let us put it the other way, Mr. Stafford, if you please. Assume that the conditions were reversed and that the railroad had the power to route the freight. In my judgment—and it is a conviction on my part born of long experience—the service would immediately deteriorate on both of the lines.

Mr. STAFFORD. To my mind, the only result that would follow, as I assume, would be that the poorer equipped line would necessarily have to give a lower rate to meet the character of service they were able to perform.

Mr. BARLOW. I think that would be the same to a certain extent if the carriers selected the route. If there were reasons for giving business to one road, they would do it; and if there were not reasons, they would withhold it.

I should like to call the committee's attention to page 18, the last four lines of the second paragraph:

The commission shall not, however, establish any through route, classification, or rate between street, suburban, or interurban electric passenger railways and railroads of a different character.

I am not quite clear as to whether the use of the word "passenger" there means to apply only to passenger business, or whether it means to exclude the jurisdiction of the commission in joint rates and routes over electric railroads carrying freight. But I think the committee are conversant with the fact that the so-called electric lines are now covering a large territory in the rural districts that have heretofore

been long distances from the steam railroads. The operation of an electric line in the carrying of freight is not different from the operation of a railroad by steam. Perhaps our steam railroads will come to electricity sometime. It seems to me that the clause after the words "water line," on line 20, should be stricken out. I think the successful operation of the electric railroads is of immense importance to the great rural population which they are now beginning to serve.

Mr. TOWNSEND. There are no practical difficulties that you can recall which would prevent or ought to prevent that kind of an arrangement?

Mr. BARLOW. I think not. We have now through tariffs out of Chicago to the entire McKinley system in Illinois. The Chicago and Eastern Illinois people publish or did publish—

Mr. TOWNSEND. Are they in connection with your steam road?

Mr. BARLOW. Yes, sir; the Chicago and Eastern Illinois is a steam railroad owned by the Frisco, and it had through rates and tariffs in connection with the entire McKinley system in Illinois. It opens a direct and immediate communication between the great centers and the interurban and urban centers also by the use of these electric lines, and it performs a necessary transportation function in many instances where the steam railroads can not do it.

I think, gentlemen, I have finished.

Mr. ESCH. The New Haven road, as I understand it, owns or controls about 1,200 miles of electric line in Connecticut, Rhode Island, and Massachusetts?

Mr. BARLOW. Yes, sir; I so understand. It is general public knowledge that that is true.

Mr. ESCH. If that indicates the extent of electrification in New England, it is reasonable to suppose that they ought to be put under some governmental supervision.

Mr. BARLOW. I think that goes without saying. I think they are, strictly speaking, common carriers.

Mr. ESCH. I understood that in Massachusetts (Mr. Washburn may correct me) proceedings were brought against the New Haven road to prevent them from buying in the stock of electric lines. Am I right?

Mr. WASHBURN. Yes.

Mr. BARLOW. Indiana is a perfect cobweb of electric lines, as you know, hauling both freight and passengers.

Mr. WASHBURN. The New Haven system is all run by electricity.

Mr. ESCH. They have electrified about 18 miles of it, I understand.

Mr. WASHBURN. It goes farther than that—I think from Stamford all the way to New York, something over 30 miles. They carry all their trains in there in that way.

Mr. BARLOW. Gentlemen, one more thought in reference to the proposed amendment to the law compelling the railroads to quote rates, and penalizing them for the misquotation of rates. From my experience, I am very much in favor of that amendment just as it is drawn. I know that I differ with some of our confrères who feel that in some way the shipper should be compensated for the misquotation of rates. I am very strongly of the conviction that compensation can not come through the commerce act; that if you open the door in the commerce act and permit the railroads to protect the misquota-

tion of rates you might just as well repeal the law and go back to old conditions. The shipper does not want the company's money. We want the correct rate, and we are urging the penalizing of the carriers because of their indifference to our necessities.

May I illustrate with a case which I filed with Commissioner Harlan some time ago? The firm of Hibbard, Spencer, Bartlett & Co. (who employ an expert traffic man) had, I think, five quotations from five different railroads on a carload of refrigerators from Grand Rapids, Mich., to Ardmore, Okla. All five rates were quoted in the same week. All five of them were wrong; and they varied from 42 to 88 cents per 100 pounds. Gentlemen, how can we transact our business intelligently with those conditions existing? Since the judge in Chicago intimated that it was up to the shipper to know the rates, there seems to be somewhat of an indifference on the part of the carriers. They say to shippers: "That is the rate, but of course we are not responsible for it."

Mr. ADAMSON. Do you attribute the difference of from 42 to 88 cents in those five cases to indifference or carelessness, or do you think there was any design in it?

Mr. BARLOW. No; I attribute it largely to carelessness. For instance, there is a lack of simplicity in the publication of tariffs. We break away from old conditions very slowly. I recall, for example, that in the tariff which Mr. Lincoln refers to—the South-western tariff into Texas—one of the rules goes on and says that in mixed carloads of hardware certain kinds of stoves may be loaded. An amendment to that tariff, recently published, says, referring back to the original tariff: "This kind of stoves can not be loaded under this mixture;" and it is the same kind of stoves that the original tariff said could be loaded. There is simply indifference in the publication of tariffs. Instead of making the amendment, they should have canceled the original rule, so that the shipper might know what to do. We do not want their money; but we do feel that if their responsibility is brought home to them they will find a way (which I believe they can find) to give us the right rate and one on which it is safe for us to go ahead and conduct the enormous commerce of this country.

Mr. ADAMSON. Recognizing the intricate character of the methods in which those rates and schedules are printed for the use of the public, do you not think it would be pretty harsh to place severe penalties on railroads in regard to information given as to rates beyond their own lines? If these country agents can read the rates on their own lines better than you gentlemen can, they are not expected to read all of them all over the United States any better than you can, are they?

Mr. BARLOW. I see no physical reason and no other reason (and I speak from long experience) why the agent at the station where you live should not tell you the rate from that station to all points on the line of railroad on which you live, and to all points with which that railroad has through rates and tariffs.

Mr. ADAMSON. According to the way you gentlemen describe the difficulties of the situation, and what we all know about those agents, it would cost the railroads \$5,000 apiece per annum to hire agents of the capacity that would be required.

Mr. BARLOW. No; I think not. It might now, under the confusion which exists, because there are lots of \$15,000 men that can not tell the rate at present.

Mr. ADAMSON. If these things are difficult for men of the capacity of you gentlemen, it would bankrupt all the railroads to hire men as smart as you are to interpret them and give all that information at all these stations. You would come cheap at \$5,000 a year, I know.

Mr. BARLOW. Again you are very kind; but I can hardly interpret them myself. I am now urging this committee to take some action that will compel the carriers to take the action which we believe it is incumbent upon them to take—to tell us what is the cost of transportation, just the same as a shoemaker tells you the cost of a pair of shoes. The conditions that exist now are absurd, and they are almost insufferable.

Mr. ADAMSON. Do you not think you really ought to make some allowance for a difference between what they are expected to know about their own business, their own lines, their own stations, and their own rates, and what is published about all the other rates and companies in the United States?

Mr. BARLOW. My judgment is (as I said before) that the agent at the station where you live should be of sufficient mental caliber, and that the tariffs published should be so simplified, that he can tell you the cost of transportation of a box of household goods to any point on the road on which he is located, and to any point where that railroad publishes through rates and through tariffs.

Mr. ADAMSON. Then it would be so plain that we would not have to ask him at all, would it not? We would all be able to read it.

Mr. BARLOW. There is no reason why it should not be so. I think the mystery surrounding the question can be very easily cleared up, and I believe the imposing of this very small fine of \$250 will encourage such a movement.

Mr. ADAMSON. You believe it is possible to get these schedules of rates printed in language that the ordinary understanding can comprehend, do you?

Mr. BARLOW. I do; I do.

Mr. ADAMSON. I am glad to hear it.

Mr. ESCH. Some two or three years ago this committee had a hearing with reference to icing charges. Under section 8, on the application of a rate, would that embrace the icing charge on articles which required icing?

Mr. BARLOW. What page is that?

Mr. ESCH. Page 14.

Mr. BARLOW. I am inclined to think, under that, that if the shipment was perishable freight, the shipper would inquire if there were any extraordinary charges in addition to the transportation charges. He would familiarize himself with the expense of icing, etc., if it was not included in the rate.

Mr. ADAMSON. If it was live stock, it would embrace care, feeding, watering, and so on?

Mr. BARLOW. Those are all subject to the natural rules of the carriers.

Mr. ADAMSON. Would that be included in the rate, or incidental to it, or attached to it, or added to it? They would want to know about that.

Mr. BARLOW. No; that is quite different. In the shipment of perishable freight in refrigerators, under some conditions the shipper pays the cost of icing; under other conditions the carrier pays it. The shippers of perishable property would undoubtedly familiarize themselves with the situation; and if there was a charge other than the freight transportation charge, they would undoubtedly know it. I think, however, that in all cases where there is any charge other than the straight transportation charge the tariff should so state. I think it does, Mr. Lincoln, does it not?

Mr. LINCOLN. Whenever the tariffs include a charge for refrigeration, it is shown and provided for in the tariff. That is a requirement of the commission.

Mr. BARLOW. That is my understanding.

Mr. LINCOLN. That is a regulation in connection with the publication of tariffs.

The ACTING CHAIRMAN (Mr. Wanger). Have you concluded, Mr. Barlow?

Mr. BARLOW. Yes, sir; I think so.

The ACTING CHAIRMAN. Are there any other questions to be asked of Mr. Barlow?

Mr. BARLOW. That is all I have to say, except to thank the committee for their very kind indulgence.

FURTHER STATEMENT OF MR. J. C. LINCOLN.

Mr. LINCOLN. I will state, in presenting my remarks upon the subjects upon which I will speak, that I do so as the representative of the Merchants' Exchange, and as voicing the sentiment of various shippers with whom I have been associated and with whom I have discussed these subjects. But in making the presentation (and here I am treading upon rather dangerous ground, viz, that of legal matters rather than transportation), I wish you would disassociate me from the office of president of the National Industrial Traffic League. I make that statement for the reason that even though the executive committee of the National Industrial Traffic League may have approved certain things (as they have done in these cases), the president of the league can not appear before any tribunal in an official capacity until the body as a whole indorses the matter; and they have not yet had the opportunity to discuss these features which appear in this bill. Their consideration has been devoted more largely to transportation matters.

Mr. BARLOW. You mean that the league has not yet thoroughly digested the four propositions you are now about to address yourself to?

Mr. LINCOLN. Yes; they have not thoroughly digested and taken action upon these propositions.

I refer in the first place to the commerce court. As I say, that is largely a legal matter. Possibly Mr. Butler may wish to make some remarks in connection with it. But, as it has been indorsed by our executive committee, I want to advocate the commerce court. In making my suggestion or recommendation, I recognize that there is not the same necessity for the commerce court to-day that there was five months ago, by reason of the recent decisions that have been handed down by the federal courts in the Illinois colliery case and in

the Pitt colliery case, giving administrative powers to the Interstate Commerce Commission that have been heretofore contested. Nevertheless, I feel that the body of shippers and the body of railroad men should advocate a central court instead of the various circuit and district courts. As that court will deal with the transportation questions that are embraced in the interstate commerce act, it will be enabled thereby to have judges of trained minds by reason of their continually sitting in such cases and practically being confined to transportation cases in the handling of these subjects and the laying down of the law along one course. As it is now, we have varying decisions in the different federal and circuit courts, so that it is hard for the shipper to determine what is his right and what is the right of the carrier. I therefore wish to recommend the creation of a commerce court. As to its legal form, that is a matter I can not treat upon, as I am merely a layman. I am not a lawyer; I do not understand the law or the legal questions involved.

MR. STEVENS. Is that all you want to say on that subject, Mr. Lincoln?

MR. LINCOLN. Yes, sir.

MR. STEVENS. Why should you (the shippers and carriers) have a special court for the adjudication of your class of cases, any more than the patent lawyers (who have a decidedly more technical branch than yours) should have a special court for their class of business, or the land attorneys?

MR. LINCOLN. Well, that may possibly be true. I am not prepared to deal with these questions.

MR. WASHBURN. I think the Judiciary Committee has favorably reported a bill providing for a patent court.

MR. STEVENS. I notice that there is a bill providing for a land court, also. Now let me ask you this question: As an American citizen, do you think it is good policy for us to give preference to certain classes of business, and give them special tribunals for the trial of their class of cases, away and apart from the great mass of litigation that affects the American people generally?

MR. LINCOLN. I think that transportation is a special business, involving the entire country more than any other feature. I think, furthermore, without any reflection upon the legal department, or the judges, that their duties have been so conducted along certain lines that they are not as familiar with the transportation laws as it is necessary that they should be. I have had judges say to me: "When it comes to commerce matters, with all your intricate freight rates and all your rate questions, I profess ignorance; I can only get knowledge as it comes before me." For that reason judges who will make a study of these problems will come nearer getting correct results than people who are located in different sections of the country and have first one petition before them and then another.

MR. STEVENS. There are two views about that that I would like to ask you about: First, is it not true that the great mass of litigation concerning transportation questions will be had in comparatively few jurisdictions—Boston, New York, Philadelphia, Pittsburgh, Chicago, Cleveland, St. Louis, Denver, San Francisco, Seattle, New Orleans, and, perhaps, St. Paul, Minneapolis, and Atlanta? Would not those jurisdictions embrace nine-tenths of all the litigation on transportation matters in the United States?

Mr. LINCOLN. I think they would.

Mr. STEVENS. What is the use, then, when you have judges there who have the great mass of litigation of that particular kind (that would be about 15 judges), of excluding from the same privilege 55 or 60 or 65 other jurisdictions in the United States?

Mr. LINCOLN. I tread upon rather dangerous ground when I tread upon the domain of the judicial powers; but I have felt, as I say, that we want uniformity in these decisions.

Mr. STEVENS. Why should you have uniformity any more than the man who is interested in the merchant's law, or the law of real estate, or the law of master and servant, where they have equally conflicting decisions? Why are you entitled to that privilege any more than they?

Mr. LINCOLN. I am speaking of both the shipper and the transportation company—because this is such a very large question, and involves so much.

Mr. STEVENS. But taking them both, why is this class entitled to a preference, and an effort to harmonize their decisions, any more than than the vast mass of different cases of other classes?

Mr. LINCOLN. There might be reasons why the other classes should have special consideration. I am not acquainted with them. If the volume of business and litigation was sufficient to make it essential to have uniform laws, they are possibly entitled to them. I can not speak on that point.

Mr. ADAMSON. There are three other considerations that I suppose you will admit that are as general and important as commerce—that is to say, the pursuit of life, liberty, and happiness. It has been found satisfactory in this country for a good while for all those subjects to be permitted to take their course in a homogeneous manner and for all to be treated alike, with the same system of laws, has it not? And do you not think it is best to continue to treat our people with a homogeneous system, and get them all in the habit of having the same kind of treatment everywhere?

Mr. LINCOLN. As I say, we recommend the commerce court, although I do not believe that the same necessity exists for it to-day as ninety days ago. But we think it is a good thing, and we favor it, because we have had this varying litigation. We have had different decisions with different jurisdictions.

Mr. ADAMSON. Do you think it would be a good idea to cultivate one court and one guild of lawyers and suitors who would know all about one thing, and, by the neglect and denial of that entire subject to everybody else at all the other courts, allow them to know nothing about it?

Mr. LINCOLN. I feel upon that question that they are following precedent very largely. We have found it necessary to have a railroad commission, because the subject of transportation was so large that it had to be dealt with by a special arm of the Government. I feel that judicial matters should proceed somewhat along the same lines, by having men who are specially equipped to handle these subjects, as they can only be equipped by experience, and by having those cases come before them in their varying capacities.

Mr. ADAMSON. We have not all agreed yet that the creation of the railroad commission was not a mistake.

Mr. LINCOLN. Possibly not.

Mr. ESCH. If Congress, in its wisdom, established less than a year ago a customs court dealing with maximum rates of \$350,000,000 a year, might it not also, in its wisdom, establish a commerce court dealing with rates aggregating \$2,000,000,000 a year?

Mr. LINCOLN. That is my thought.

Mr. ADAMSON. It might be the same kind of wisdom.

Mr. STEVENS. Might not Congress have learned a little since that time?

• Mr. LINCOLN. Possibly. But, as I say, these are legal, judicial problems. I felt that I was treading upon dangerous ground in undertaking to answer legal questions. I am only putting my views before you as a layman, as showing the way the shippers view the matter.

Mr. ADAMSON. We are in ten thousand pounds of trouble now and are wading into intricacies daily, because we made the mistake of creating the Interstate Commerce Commission, instead of defining rights and duties and fixing crimes and penalties for the violation of them.

Mr. LINCOLN. Mr. Butler, while we are on the subject of the commerce court, do you desire to make any remarks?

Mr. BUTLER. I think not, Mr. Lincoln.

Mr. LINCOLN. Then I will proceed.

The other feature of the bill is in regard to the issuance of stocks and bonds. I wish to make these general remarks upon that subject:

In order to arrive at the proper basis for the determination of the earning power of carriers, much has been said on the question of procuring their physical valuation, which, in turn, leads to the question of government ownership of our railroads. The latter would, in our judgment, prove a calamity. The operation of our railroads under private ownership conduces to their effectiveness and the enjoyment of competition. As to physical valuation, some of our prominent railroad officials are on record as saying that transportation charges are not based upon the value of the property. To ascertain the physical valuation brings on questions indefinite of determination—questions which would ever be confusing, and which do not bear directly upon the main question—that of the transportation charge.

The history of our carriers has shown conclusively that water has been injected into many of our corporate bodies. If we should undertake to eliminate the water, innocent holders of such stock would have to suffer. If, however, we regulate the future issue of stocks, bonds, and notes, in time the water will evaporate from the existing stocks.

I think it is not well to disturb the dust or dig up the bones of the past, but, instead, to look to the future by the infusion of life, blood, and sinew into these corporate bodies. Our great railway enterprises can not successfully develop without the financial aid of the general public looking for safe investments. The public is entitled to protection when it goes into the market and purchases the stocks and bonds of our great transportation companies. If the commission and the commerce court, or a competent federal body, were clothed with the necessary authority, subject to wise laws and regulations, to guard every issue submitted to them, the purchase of our stocks and bonds in the markets of the world would be less hazardous; there would be an official sanction as to the proper use of the funds derived therefrom, and we would have less of stocks and bonds based upon inflated values.

We believe the granting of this supervision over the issuance of stocks and bonds would not only mean confidence on the part of the public in the legality and soundness of these issues as safe for investment purposes, but would be of material advantage to the carriers themselves in placing them upon the market, the confidence of the public having been secured.

There are so many reasons for such federal regulation of the issue of stocks and bonds that it seems to me such a law should be enacted, without injustice to the corporate interests, but in protection of the public interests.

I will state, in that connection, that on page 26, line 18, I believe it should be made clear that common carriers which may have electric power shall not be excepted from the operations of section 12.

That is all I have to say on the subject.

The ACTING CHAIRMAN. Are there any questions?

Mr. KENNEDY. If this power is given to control the issue of bonds, would it not carry with it the veto power to prevent the building of railroads at all?

Mr. LINCOLN. I do not think so, if you satisfy the public that the investment is being properly made and the money is being put into the enterprise.

Mr. KENNEDY. Do you not think there ought to be that power given somewhere, where a public railroad is not needed?

Mr. LINCOLN. I do not quite understand the question.

Mr. KENNEDY. Where a public railroad is not needed, where there is a road that is capable of supplying the demands of commerce, is it not a waste to build another public highway and capitalize both and divide the traffic between the two?

Mr. LINCOLN. I have given some thought to that proposition, and I have sometimes felt that we are overconstructing; that where a territory is well served and amply served, the building of parallel and competing lines dividing up that territory possibly should be stopped.

Mr. KENNEDY. It is a waste.

Mr. LINCOLN. We want the benefit of competition; but if we have that kind of competition, and both are there and have to be supported, we can only expect that in the end we will have to pay for them.

Mr. ADAMSON. I know some territory that very badly needs dividing up. If you know of a supernumerary company with plenty of money, I wish you would refer it to me; I will find it a place to move to.

Mr. LINCOLN. We have some territory where we need new lines. There is no doubt of that.

Mr. STEVENS. I should like to ask you something on that point. It seems to me the position you have just taken is correct; that where a territory is served by a strong line, adequately equipped, able to continue its equipment with the proper condition of affairs in that section, and strongly controlled by the public authorities so as to protect the public interests, it had better be done in that way. But what do you say as to the other kind of a section, such as we have in the South and West, where there are insufficient railroad facilities, where the construction of a line is speculative, where strong lines like the transcontinental lines are not in existence, and where a speculative line could not be constructed if too rigid an exaction were made as to the issue of securities, because the existing strong lines could through

various influences compel so rigid an exaction as to the issuance of securities as to prevent speculative securities for those new lines being placed upon the market? What do you think about that?

Mr. LINCOLN. I have given some little thought to that.

Mr. STEVENS. What do you think ought to be the condition in such a case?

Mr. LINCOLN. I do not know.

Mr. ADAMSON. I should like to add to Mr. Stevens's hypothetical question right there that every one of them starts out with the argument that Mr. Kennedy stated—that no other road is necessary there; that theirs is sufficient. Every single one of them that I know of claims that.

Mr. LINCOLN. I appreciate that in the construction of a new line in new territory there is possibly some speculative value attached to the stock. But I am not a financial man, and I can not comprehend why you should sell stock of the par value of \$1.50 on the dollar to raise \$100,000 having \$200,000 of stock outstanding that has brought in \$100,000 instead of issuing just half the amount of stock and securing the money at par value. The speculative value—that is, the chance of profit—is from the return on the investment; and I see no reason why you should not be able to make a return on an investment of \$100, say, at 5 per cent, just as well as a return of $2\frac{1}{2}$ per cent on twice the amount.

Mr. STEVENS. Let me ask you this: Do you think it would be a good thing for the territory west of the Missouri River to have for all future time, so far as we can now foresee, its transportation facilities entirely in the hands of existing strong lines—the Great Northern, the Northern Pacific, the Chicago, Milwaukee and St. Paul, the Union Pacific, the Atchison, Topeka and Santa Fe, the Southern Pacific, and the Denver and Rio Grande?

Mr. LINCOLN. I have not felt in my own mind that that would be the case. I have felt that possibly some construction would not be engaged upon without more of a certainty as to its future. But when construction is engaged upon, and stock is issued, as I say, practically beyond its value, when it has been constructed the public has to pay for it. We want to pay for what is actually invested in it, and not that which is speculative.

Mr. STEVENS. Do you think that a new line in that territory could get any money for construction if the stocks and bonds had to be floated substantially at par?

Mr. LINCOLN. I feel that it could if it were a good enterprise, and not started entirely upon the basis of a speculation for the purpose of getting rid of the stock and getting out.

Mr. STEVENS. That is your judgment; and I value your judgment more than I do my own, though I should differ with you. Do you think, for example, that under such requirements as you have stated, the line from Kansas City southwest—what is that, the Stillwell Line?

Mr. LINCOLN. The Stillwell line; the Kansas City, Mexico and Orient.

Mr. STEVENS. Whatever it is, do you think that line could have been constructed? That is a speculative line, is it not?

Mr. LINCOLN. I did not look upon it as a speculative line. I looked upon it as a pretty good business proposition and one that is going to have a return.

Mr. STEVENS. Oh, certainly; but at the time it started; several years ago, it was a speculative line, was it not?

Mr. LINCOLN. Along with all others; yes, sir.

Mr. STEVENS. Could such a line be started now if such a requirement as you have just stated existed as to the issuance of securities?

Mr. LINCOLN. It is problematical with me; but I think it could. I may be mistaken; but I think it is something that is for the wisdom of you gentlemen, in your investigations, to bring out. If we can get supervision without handicapping the further building of our railroads where they are needed, we want to get it.

Mr. STEVENS. Yes; I agree with that.

Mr. LINCOLN. I am not sufficiently familiar with finance, and the issuance of stocks and bonds, and the methods employed (though I know some of them are very bad; we can see that by the testimony) to say what should be done. But there should be something done.

Mr. ADAMSON. I was called out for a moment, and I have no idea of going back over what you went over; but I will ask you just there if your idea is that this restriction would regulate rates, or help to regulate rates? Is that the ground you base your argument upon?

Mr. LINCOLN. My own idea in regard to it (and, I may say, what has led me to the discussion of the subject more than any other thing) is that in a number of the recent cases the roads have set up the plea that they were entitled to returns based upon the physical valuation of their property.

Mr. ADAMSON. That is all; I simply wanted to know if that was the ground you put it upon.

Mr. LINCOLN. And in the same breath they say that their rates are not made with any reference to the valuation of the property.

Mr. ADAMSON. The shipping public would have no interest in it except as it affected rates.

Mr. LINCOLN. It is affecting rates in that way. The advances that were made to Texas points were predicated absolutely upon the claim that they were not securing sufficient returns upon the value of their property. I am not in favor of the physical valuation of properties, because I fear some harm may be done; but I hope some plan may be evolved by which, ultimately—not in one year or two years; it may take ten years—we may get the property on a legitimate basis.

Mr. ADAMSON. It does not look right, in an argument of that sort, for existing lines to be used to discourage a struggling enterprise desiring to build in a neglected section of country, does it?

Mr. LINCOLN. No, sir; if it is going to result in that, in having the portions of our country neglected which are not now served by the carriers, we do not want to do that—certainly not. I hear a great deal of discussion upon that point. I have had quite a discussion upon that point with several people who have urged the view that it will stop certain building.

Mr. ADAMSON. You know the trunk lines think the country is sufficiently served if they can get all the business to their lines, no matter how far it has to be brought by wagon, or what difficulty is involved in getting it there.

Mr. LINCOLN. I will say that there are certain portions of the country that are sufficiently served, and there is not enough traffic to go around on those lines now. I understand there is a law in England in regard to the regulation of the construction of competing lines, which it would be very well to look into.

Mr. ADAMSON. Who would you elect as the judge as to what parts of the country should be turned out, and what should be further cultivated?

Mr. LINCOLN. I could not judge as to that.

Mr. KENNEDY. Why would not the investing public be a good judge of that? If we should make a restriction upon the right to sell stock very much below par, then where a public railroad was needed the money could be obtained under those regulations, and where it was not needed it could not be built.

Mr. LINCOLN. Where it is not needed it should not be built, because it is just a tax upon the entire people.

Mr. TOWNSEND. Mr. Lincoln, as I understand, the question that is in the minds of the gentlemen here and others is whether, if you eliminate the speculative feature (which this bill attempts to do to some extent), it will stop legitimate railroad building. That is the question before us.

Mr. LINCOLN. I do not believe it will, but that is only my personal opinion.

Mr. TOWNSEND. I understand that. Is it not a fact that a great deal of the railroad building in just such territory as has been suggested here by Judge Kennedy (viz, in territory where it is not actually needed) is launched and carried through on a speculative notion that possibly some day it will be able to sell out to the existing road or hold it up in some way?

Mr. LINCOLN. A great deal of the construction is done in that way.

Mr. TOWNSEND. I know that is absolutely true in reference to electric railroad building, because I have seen it and have been interested in cases involving it, and I have learned that the same thing is true in reference to the other case. So it comes finally to the question as to the relative value of speculation and legitimate railroad building?

Mr. LINCOLN. That is what it comes to—speculation or legitimate railroad building; not speculation, either, but selling stock and getting out and letting the other fellow "hold the bag."

Mr. ADAMSON. Then it seems to me that Judge Kennedy's idea ought to be given full scope and range, to allow latitude for judgment to exercise itself as to where it would be profitable for capital to go.

Mr. LINCOLN. I really think that Judge Kennedy's suggestion is one well worthy of consideration in a large portion of this country—to discontinue this thing of building competitive lines when the existing roads are amply able to take care of the business of the territory.

Mr. ADAMSON. But what is the use of hampering it with so many restrictions? Why not let the judgment be free?

Mr. KENNEDY. We have a great many railroads built in our country in this way: Under the old practice, before the regulation of rates was thought of, the owners of factories and mills when they would locate on a single line would conceive that they could not do business successfully unless they got together and built another line. They thought that such competition was absolutely necessary in order to get a fair rate and fair service out of the railroads. In that way, through a valley that had enough commerce to serve one railroad well and maintain it well, they established two public highways at double the expense that it would have cost to have built one. Now, of course,

they must pay double the freight, if the railroads are permitted to charge what we term compensatory rates.

Mr. LINCOLN. The condition of which you speak is that which existed more than ten years ago, before there was any regulation of rates, and they were seeking competition so as to get beneficial rates.

Mr. STEVENS. Is not this the question, rather? (I beg pardon, but this follows the same line.) That may be the condition as to territory that is fairly well served now by existing lines; but——

Mr. LINCOLN. The condition of which Judge Kennedy spoke!

Mr. STEVENS. Yes.

Mr. LINCOLN. Yes, sir.

Mr. STEVENS. But my brother Adamson and I were speaking with reference to other territory that is not served by existing lines.

Mr. LINCOLN. I have in mind such territory as you speak of. Southwest Missouri, for example, needs more railroads.

Mr. STEVENS. There is a very large amount of such territory in the United States. Is not the question under this bill something like this: Shall we give to existing lines for all future time, so far as we can foresee, a complete monopoly over the extension of railroads into that unoccupied territory, or shall we fix conditions so that competition may be had by inducing people of a speculative turn of mind to take their chances by going into that unoccupied territory? Is not that the proposition?

Mr. LINCOLN. That is the proposition you have to consider; but I do not think this proposed law would stop building. That is my objection.

Mr. STEVENS. That is what I wanted to cover.

Mr. LINCOLN. It will stop speculation, but it will not stop legitimate business enterprise, in my judgment. I may be wrong.

Mr. ADAMSON. I have noticed agitation for reform in several States in the last few years with that idea as the leading one, and the only effect it has had so far as I have seen has been to break down the new enterprises, the new roads that people were trying to build. The old ones survived without any trouble, but the new ones went into the hands of receivers.

Mr. LINCOLN. Those are things to which you have got to give thorough consideration.

Mr. ADAMSON. Personally I would rather have remained in ignorance of the value of a few stocks for a few years and let those roads be finished. We needed them to break up monopolies.

Mr. ESCH. Would you favor giving the Interstate Commerce Commission the power (as I think it is given to the commission in the Mann bill) to determine whether a line shall be constructed and provide that before its stocks or bonds can be put on the market or a spade turned the commission should issue (in the language of the New York statute) a "certificate of convenience and necessity?"

Mr. STEVENS. That is the Wisconsin law, too, is it not?

Mr. ESCH. Yes; we have the same law in Wisconsin.

Mr. LINCOLN. That would seem to be a very fair provision—that there must be a convenience and necessity for it.

Mr. ESCH. If you gave to that tribunal that power, it would avoid the objection which some of the gentlemen have been urging. They would not give a certificate of convenience and necessity for the construction of a line in territory already sufficiently supplied.

Mr. LINCOLN. I think that is a very good plan. I think it is a very proper thing to do.

Mr. ESCH. You think that is a proper plan?

Mr. LINCOLN. I think it would reduce our tax upon transportation and not permit lines to be constructed where there are now ample facilities.

Mr. ESCH. And if such a certificate were issued, it would at once stabilize the stocks and bonds of such corporations, would it not?

Mr. LINCOLN. I believe it would. That is my judgment.

Mr. ESCH. And it would beget confidence therein which would immediately make them acceptable to the market?

Mr. LINCOLN. That is my judgment, as I stated.

Mr. ESCH. In the case of the consolidation of lines—and I understand both these bills countenance consolidation in certain cases—what would you put as the value of the line after consolidation?

Mr. LINCOLN. I could not answer that question; it is too much of a financial one.

Mr. ESCH. Would you limit it to the combined stock and bond issues of the uniting lines, or would you allow a capitalization beyond that total amount because of the consolidation?

Mr. LINCOLN. No; I do not think you should allow for any capitalization beyond the actual value.

Mr. ESCH. In the same connection, a railroad grant is a franchise, and sometimes is exceedingly valuable, and the franchise is capitalized. Would you favor the capitalization of a franchise beyond merely its initial cost?

Mr. LINCOLN. It seems to me that on the consideration of franchise they have no right to capitalize it beyond its original cost.

Mr. ESCH. But as a practice it has been done.

Mr. LINCOLN. It has been done.

Mr. ESCH. Is that wherein some of the water has been injected into securities?

Mr. LINCOLN. There is no doubt about that. Those points are raised quite often. The franchise is not worth anything without the facilities or the business that is going to come from that franchise.

The ACTING CHAIRMAN. When you say its original cost or initial cost, do you mean its cost for development as well as for establishment, or simply for establishment?

Mr. LINCOLN. Oh, you have to include in the cost the actual cost of development; it goes in, too.

Mr. TOWNSEND. Mr. Chairman, I want to ask Mr. Lincoln one question further in reference to Mr. Esch's proposition. You say, Mr. Lincoln, that where there is a combination or merger of two roads, they should not be allowed under the new issue of stock or securities to exceed the combined issue of the two roads?

Mr. LINCOLN. That is my judgment.

Mr. TOWNSEND. That would mean that there never would be any merger, would it not, unless their stocks and bonds were of exactly the same value when they went into the merger? Here is one road, for instance, capitalized for \$2,000,000 and another one for \$1,000,000. The stock of one is worth \$200 a share; the stock of the other is worth \$100 a share. Are you going to issue \$3,000,000 worth of that new stock in the same proportion in which the original stock was issued?

Does not that proposition presume that the inherent values of the two pieces of property are the same?

Mr. LINCOLN. When they merge them; yes, sir.

Mr. TOWNSEND. That one is of equal value with the other, dollar for dollar?

Mr. LINCOLN. When they make the merger, they put them in as one; both go in at one value.

Mr. TOWNSEND. If you were running a railroad and had full power, you would not want to capitalize a new venture composed of your road and another one if your stock was worth twice as much as the stock of the road was worth that you took in with yours; would you?

Mr. LINCOLN. It would not seem so.

That is all I have to say, gentlemen.

STATEMENT OF MR. RUSH C. BUTLER, OF CHICAGO, ILL.

The ACTING CHAIRMAN. In what capacity do you appear, Mr. Butler?

Mr. BUTLER. I appear representing the Chicago Association of Commerce, composed of over 3,000 individuals, firms, and corporations doing business in the city of Chicago, and several thousand non-resident members living in territory tributary to Chicago who buy their goods at wholesale in the Chicago market.

The CHAIRMAN. What position do you hold?

Mr. BUTLER. I am an attorney practicing law in Chicago—a member of the firm of Cassidy & Butler. I am also authorized to speak in this behalf by the Chicago Bar Association, whose membership, I believe, is over one thousand; and at the request of Mr. Lincoln I say what I have to say also on behalf of the executive committee, as I understand it, of the National Industrial Traffic League.

I am advised by Mr. Mann, of your committee, that he has some ideas with reference to the two points that I wish to discuss before you that are at variance with my ideas upon those subjects. I see that it is now quarter of 4; and unless you gentlemen desire me to proceed now, and are not intending to meet in the morning, I should much prefer to make my remarks in the morning, when Mr. Mann will be present.

Mr. ADAMSON. I think that if we digest what we have heard to-day already, we shall do pretty well. I move that we adjourn until to-morrow.

Mr. ESCH. You have no other statement that you wish to make?

Mr. BUTLER. No, sir.

Mr. STEVENS. Will this conclude all of the witnesses?

Mr. LINCOLN. Yes, sir.

Mr. STEVENS. Perhaps we had better do that, then.

(The committee thereupon adjourned until to-morrow, Friday, February 4, 1910, at 10 o'clock a. m.)



HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART X

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

HOUSE OF REPRESENTATIVES.

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IRVING P. WANGER, PENNSYLVANIA.

FREDERICK C. STEVENS, MINNESOTA.

JOHN J. ESCH, WISCONSIN.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, February 4, 1910.

The committee met this day at 10.30 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. Is there some one to be heard this morning?

STATEMENT OF MR. RUSH C. BUTLER, OF CHICAGO, ILL., REPRESENTING THE CHICAGO ASSOCIATION OF COMMERCE AND THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

MR. BUTLER. Mr. Chairman and gentlemen, I am authorized to appear here in behalf of the Chicago Association of Commerce and of the National Industrial Traffic League, and I would also state that the Chicago Bar Association has indorsed the two provisions concerning which I wish to speak.

Now, Mr. Chairman and gentlemen, I wish to speak upon two subjects only, and while what I shall say will be largely with reference to the provisions of the so-called "Townsend bill," nevertheless I believe that both propositions should be considered and enacted as an amendment to the present law, regardless of whether the commerce court provided for is created or not.

The points are these: First, that either party to a proceeding before the Interstate Commerce Commission shall have the right to have the order of the commission reviewed in the circuit court or the court of commerce and in the Supreme Court. The provision of the act as it now stands with reference to reviewing orders of the commission states as follows, being a part of section 16:

The venue of suits brought in any of the circuit courts of the United States against the commission to enjoin, set aside, annul, or suspend any order or requirement of the commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office—

indicating that such orders can only be reviewed when they are made against the carrier and not when they are made against the complainant shipper.

I am aware of the broad authority that the recent decisions of the Supreme Court of the United States have conferred upon the commission's jurisdiction, to the exclusion of the courts. I am aware that the Supreme Court has said that the courts in reviewing any order rendered by the commission are confined to practically two questions—first, constitutional questions, and, second, questions of the jurisdiction of the commission—and of course it goes without saying that any provision for review instituted by the shipper who is aggrieved would be likewise limited, and of course the right to such review should not be denied to the shipper, although it is so denied by implication in the act as it stands to-day.

To illustrate: The commission within the last two or three weeks has handed down an opinion in the Joynes case, pending before it, the commission being divided, four to three, in that opinion, in which the commission held that it did not have jurisdiction to enter the order prayed for by the shipper. The point there involved was a claim for damages by Joynes against the Pennsylvania Railroad Company by reason of the failure of the railway company to switch cars containing his perishable products into a place where those cars could be unloaded, although the railroad did furnish those facilities promptly to Joynes's competitors. Joynes's claim before the commission was for the damages he had sustained by reason of the decay of his fruit and perishable products, and the commission held that it did not have jurisdiction to entertain that complaint, and that its jurisdiction in reparation cases was practically limited to restoring to the shipper any excess freight rates that he may have paid.

Now, under the act as it stands to-day and under the decisions of the Supreme Court of the United States, which hold, in effect, that every shipper must first go to the Interstate Commerce Commission with his grievance before he can have resort to the courts, this complainant, Joynes, having gone to the commission, and the commission having declared that it had no jurisdiction to entertain his complaint, Mr. Joynes has practically been to the court of last resort, unless there is a common-law right or some constitutional right of which he has been deprived or to which he may have resort.

The CHAIRMAN. Could he not resort to the courts? Could he not bring a suit? Is not that well established?

Mr. BUTLER. There is no provision in the act for so doing, Mr. Chairman.

The CHAIRMAN. It does not require a provision in the act. You can bring a suit under the federal law.

Mr. BUTLER. The commission so held, and practically remanded him to the courts.

The point I make is this, Mr. Chairman: The act, as it now stands, contemplates to give to the shipper the right to go to the commission, and there is no express provision here permitting the shipper to have the order entered. Now, it is conceded here that if Joynes went into the circuit court of the United States on the question of the jurisdiction of the commission and the circuit court should hold that the commission was in error in dismissing his complaint because the commission did have jurisdiction, and should require the commission to go ahead and hear his complaint and enter an order, even then the commission might say, "We entertain jurisdiction and find the facts against you;" so that he would not gain anything by having gone to the court. But the point is that he should have a specific right by apt language in the statute permitting him this resort to the court, and that it should not be left to stand denied to him by such language, so strongly implying a denial of that right.

The CHAIRMAN. It is very plain that the interstate-commerce act never contemplated that. It was never the intention of Congress to do that.

Mr. BUTLER. Mr. Chairman, in a dissenting opinion rendered by Commissioner Lane, concurred in by two members of the commission

whose names I have now forgotten, it is pointed out that in 15 or 20 cases of a similar character the commission has granted reparation.

Mr. ESCH. Could you have that opinion printed as a part of your hearing?

Mr. BUTLER. I would be glad to do so, Mr. Esch. I have a copy of it with me.

Mr. ESCH. Including the dissenting opinion?

Mr. BUTLER. Yes; I will hand it to the stenographer if you desire and have it included in the record.

(Opinion is printed at the conclusion of this hearing.) -

Mr. BUTLER. From the way the act is now framed, it would seem that there was an assumption somewhere that the commission could not err as against the shipper.

Mr. TOWNSEND. Now, Mr. Butler, I would like to ask you two or three questions to see if I get a clear understanding of the law. Let us take the question of the rates for carrying freight. The law says that all rates must be just and reasonable, but, not caring to fix each individual rate, it provides for a commission to determine what is that just and reasonable rate. It is a sort of quasi legislative, but in one sense a mechanical, operation for them to go through. That is the people's way, through their representatives, of determining just and reasonable rates. Now, you say that you think a man who thought he was aggrieved when the rate was not fixed as low as he thought it ought to be, ought to have a way of appealing from that decision or of trying it out in the courts somewhere. Suppose the Congress had fixed the rates absolutely, without delegating that power to the commission, do you think a shipper would have the right to go into court and say that Congress had not fixed the proper rate?

The CHAIRMAN. Or had not fixed the rate at all?

Mr. TOWNSEND. Yes; or had not fixed a rate at all?

Mr. BUTLER. You were not here, Mr. Townsend, when I opened my remarks. I do not believe that the courts have the right to review the acts of the commission establishing a reasonable rate; that is, as to the reasonableness of the rate. I do not want the courts to be given that power, even if it might be given them by Congress, because even if the granting of such power were within constitutional limitations it would be exceedingly dangerous.

Mr. RICHARDSON. You believe that the court has got a right to declare that a rate is unreasonable? Answer that question, please, whether it has got the right to say whether a rate is too high or not, or unreasonable.

Mr. BUTLER. I do not believe so.

Mr. RICHARDSON. Then what right has the court got at all if it has not the right to declare a rate reasonable or unreasonable? What right has it?

Mr. BUTLER. It has the right to determine whether or not the rate is so unreasonable as to be confiscatory or in violation of a constitutional right, and to review the order of the commission to ascertain whether the commission has jurisdiction to enter the order.

Mr. RICHARDSON. Then that answers the question as to whether the court has the right to declare a rate unreasonable.

Mr. BUTLER. Not to determine as a mere matter of judgment whether the rate is reasonable or unreasonable.

Mr. RICHARDSON. That is a legislative act, to decide if it is reasonable?

Mr. BUTLER. Yes.

Mr. RICHARDSON. I understand that.

The CHAIRMAN. Trying to get at what you are aiming at, would you claim that the shipper in any event could ask for a review on the ground that the rate was confiscatory?

Mr. BUTLER. Certainly.

The CHAIRMAN. How would the shipper have any interest in that question? What interest has the shipper, whether the rate confiscates the railroad property or not?

Mr. BUTLER. It is not a question whether it confiscates the railroad property, but it is a question whether the rate is fixed so unreasonably high as to confiscate the shipper's property.

The CHAIRMAN. He would have to consider whether the rate was so unreasonable as to confiscate the shipper's property?

Mr. BUTLER. Yes.

The CHAIRMAN. That is an entirely new problem. That would give the courts power to say what any rate should be.

Mr. BUTLER. No, sir, Mr. Chairman; not as I conceive it; only the power to say whether a rate was so unreasonable, high or low, as to amount to confiscation.

The CHAIRMAN. Of course the shipper's property is in nowise confiscated. What you are arguing about is as to the effect it may have on the shipper's business.

Mr. BUTLER. But I think I can illustrate and make it clear what I have in mind. Of course the rate being unreasonably low might be of very much larger moment in dollars and cents to a carrier obliged to put in that rate than it would to any shipper to whom he shipped a small amount in comparison with the total traffic carried by the carrier. But the right to have an order of the commission reviewed, for which I contend, includes also any order of the commission regulating a practice, any order or requirement of the commission.

And now let me cite my instances. The Interstate Commerce Commission at the present time is engaged in hearings on the transit-privilege question. It is holding those hearings all over the country. The question of the abuse of the transit privilege is a very serious one. Assume a flour mill located at a town, say, 50 miles out of Minneapolis. This flour mill has been there for twenty-five or thirty or forty years. It is on one line of road only. Its rate on grain coming in is the Minneapolis rate, or is the rate from the point of origin of the grain to Minneapolis, plus the rate from Minneapolis to that town. Its rate on its flour going out is the rate from that town to Minneapolis, plus the Minneapolis rate to the seaboard or the market point. Now the only way that that mill has been able to continue its business for all of these years is by reason of this transit privilege, which gives it the opportunity of taking this flour on the through rate, billing it in transit, and forwarding it on the balance of the through rate. In that way this town is able to compete with the large milling industries of Minneapolis.

Now, assume that the Interstate Commerce Commission should enter an order or requirement in these hearings that it is holding, doing away entirely with that transit privilege; I can conceive of the position in which the owner of that mill might find himself. He

would be absolutely unable to carry on the business that he has been carrying on for years, and which has been adjudged legal. Now, that man should have the right by express terms of the act to regulate commerce, and should not be denied by strong implication the right, to go into the court and have that ruling or order tested by the court.

The CHAIRMAN. Do you think it would be possible to give that man the right to test his right in court by a trial without giving the railroad company the same right, which they do not now have under this construction of the act by the Supreme Court?

Mr. BUTLER. No, Mr. Chairman. I ask no more for the shipper than the carrier has under the rulings of the court.

The CHAIRMAN. You are asking us, in that case, to let the courts review the facts in the case. Assuming that the Interstate Commerce Commission has decided on the facts of the case against the shipper in that case, you are asking that we should permit the courts to review the decision of the commission as to what ought to be done under the facts in the case. Is not that the position you take?

Mr. BUTLER. It is not. If that is the idea I conveyed to your mind, I was unfortunately unsuccessful.

Mr. STEVENS. That stoppage in transit is a practice that is allowed by railroad companies in certain cases, is it?

Mr. BUTLER. Yes, sir.

Mr. STEVENS. Now, that practice is a sort of regulation of commerce that is abolished by the Interstate Commerce Commission under the law as it stands?

Mr. BUTLER. Yes, sir.

Mr. STEVENS. Now, that practice, then, being abolished by the Interstate Commerce Commission, is a legislative act as a regulation of commerce under the Constitution. Now, do you contend that the courts can decide what is a reasonable regulation or what is not a reasonable regulation under the Constitution?

Mr. BUTLER. No, sir; I do not wish any such authority conferred upon them. I merely wish a provision here that the shipper may appeal from an order of the commission in the same way as a carrier may.

The CHAIRMAN. What could the courts do? The commission has decided that the regulation is or is not the proper rate. What could the courts do?

Mr. BUTLER. The court could do nothing if the court holds that the order rendered was within the jurisdiction of the commission and did not deny the petitioner any constitutional right.

The CHAIRMAN. Suppose it was not in the jurisdiction of the commission. Then what would the courts do?

Mr. BUTLER. Then he is relegated to his right under the law.

The CHAIRMAN. He has that anyway. Nobody has taken that away from him.

Mr. BUTLER. I say, Mr. Chairman, that by strong implication he has been denied that right.

Mr. TOWNSEND. Can you not answer the chairman's question—What can he do? What right he had to protect that the court could take cognizance of?

Mr. BUTLER. He could institute his suit against the carriers.

Mr. TOWNSEND. In the court of commerce?

Mr. BUTLER. Yes; or in the United States circuit court if the court of commerce be not created.

The CHAIRMAN. Anybody can bring a suit, but what can they do when the suit is brought? What order could the court enter?

Mr. BUTLER. As I said before, Mr. Chairman, if the court should hold that the commission was wrong in denying its own jurisdiction, it could say to the commission, "You can go ahead; you have jurisdiction." That would be binding upon the commission, and then the commission should proceed to hear that man's complaint upon the merits. I grant you it might not give him any recovery, but he should be entitled to have his day in court before the commission.

Mr. RICHARDSON. Is it not your proposition that you are trying to give to the shipper just exactly the same right that the carrier has got to a review?

Mr. BUTLER. That is it.

Mr. RICHARDSON. To make the law equally applicable to both of them?

Mr. BUTLER. That is all.

Mr. KENNEDY. Congress would have the right to finally determine this question of reasonable practice on the part of the railroad, and nobody could review or set aside their action unless it was confiscatory against the railroad.

Mr. BUTLER. I agree with that proposition entirely.

Mr. KENNEDY. What is the Interstate Commerce Commission but a commission doing administrative work entrusted to it by Congress, which has delegated to it the legislative judgment as to what the reasonable practice is finally, so far as that question of fact is concerned, if it does not impinge on some constitutional privilege? So that in the action of the commission, acting merely as an administrative board to aid Congress's work, is not their action as conclusive and final as though it had been done by Congress itself?

Mr. BUTLER. It is, absolutely. There can be no question about it. But it is equally binding upon the shipper and the carrier, and still the carrier has the right to go to court to question the jurisdiction of the commission to enter the order and to question the constitutional limitation put upon the commission, and still by strong implication here the shipper is denied that right.

The CHAIRMAN. Here is the difference: Congress gives to the commission certain power, a legislative power. The commission assumes to exercise certain power. Anybody has the right to raise the question as to whether the power they have exercised is the power that has been conferred upon them.

Mr. KENNEDY. You can question that in any court.

The CHAIRMAN. Yes; as regards any act that Congress passes, you can raise the question of the constitutionality of it.

Mr. BUTLER. Yes, sir.

The CHAIRMAN. But you can not raise the question of the constitutionality of an act that we did not pass on the ground that we refused to pass it. That is a legislative power.

Mr. BUTLER. I only speak of the commission refusing to hear this man's case at all.

The CHAIRMAN. Just one moment; have you a definite proposition to be considered?

Mr. BUTLER. Yes, Mr. Chairman. If the provisions of the Townsend bill creating a court of commerce become effective, the point that I have raised is covered, and the shipper as well as the carrier can have an order of the commission reviewed.

Mr. ADAMSON. As I understand you, Mr. Butler, in a case where the railroad now has the right and power to object to a regulation that is adopted, you desire as expressly to confer upon the shipper the right to object if it is not adopted and appeal from the railroad commission because it refuses to adopt a regulation.

Mr. BUTLER. That is all.

Mr. ADAMSON. Don't you think there is quite a difference in those two propositions?

Mr. BUTLER. I certainly do, Mr. Adamson.

Now, Mr. Chairman and Mr. Townsend, the second clause of the Townsend bill—that is, the last clause on the first page—reciting the classes of cases over which the court of commerce shall have jurisdiction, says:

Second. Cases brought to enjoin, set aside, annul, or suspend any order or requirement of the Interstate Commerce Commission—

which would be an order, as presented in the Joynes case, dismissing the complaint for want of jurisdiction. Now such right is denied by the terms of the act as it now reads, section 16, which merely says that—

The venue of suits brought in any of the circuit courts of the United States against the commission to enjoin, set aside, annul, or suspend any order or requirement of the commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office.

Now, it does not say what shall happen if the order is against the shipper. I believe that the provision that I have read from Mr. Townsend's bill permits either party to have that order reviewed by express language. If the provisions of the Townsend bill are not enacted, it seems to me important that that provision be included in any amendments that are enacted.

Mr. ESCH. Is the Joynes case the only case that raises that question?

Mr. BUTLER. No, Mr. Esch, it is not the only case; but it cites, I think, in the opinion and in the dissenting opinion, practically all of the cases that have raised that question before, although Commissioner Harlan states that in the opinion of the commission the point has never been very seriously considered in the other cases, and that in the Joynes case it was as a first impression.

Mr. RUSSELL. Do you believe that if the commission should establish a rate that was unquestionably extortionate the courts would have jurisdiction to review it?

Mr. BUTLER. That depends, Mr. Russell, on how extortionate it was. If it was so extortionate as to be confiscatory, yes; otherwise no.

Mr. RUSSELL. The lowness of the rate would ordinarily constitute the question of whether it was confiscatory or not; but suppose it was so excessive as to be extortionate as against the shipper. Would that present a question that the courts could review?

Mr. BUTLER. I think so. I think the constitutional provision would apply.

The CHAIRMAN. Suppose the rate is now 20 cents a hundred and the Interstate Commerce Commission on the hearings should make it \$2 a hundred. What would the shipper do so far as this provision is concerned?

Mr. BUTLER. I think the shipper would immediately proceed to court, setting up his constitutional rights.

The CHAIRMAN. What relief would he ask?

Mr. BUTLER. He would ask protection for his constitutional rights.

The CHAIRMAN. You are a lawyer, Mr. Butler, and you must know that a man does not file a bill in court asking in a general way for the protection of his constitutional rights. He would ask for specific relief.

Mr. BUTLER. He would set up the past rate, and all the things that entered into making up the rate and the value of the service rendered by the carrier, and would conclude that it should be 20 cents.

The CHAIRMAN. What would be the prayer of his petition?

Mr. BUTLER. That the order of the commission should be set aside and held for naught, as being in contravention of his rights under the fifth amendment, depriving him of property without due process of law.

The CHAIRMAN. What good would that be? The rate would still be \$2.

Mr. BUTLER. I have not thought of the parties to the case, but I think I would enjoin the carriers before the commission.

Mr. ADAMSON. I think he is wrong. I think he should increase the membership of the commission. [Laughter.]

The CHAIRMAN. What would the court do? The court could not determine the right. Or do you contend that it should?

Mr. BUTLER. No; I do not.

The CHAIRMAN. If the court could not determine the right, what relief could he get? And if he could get any relief, would not that leave the matter in such posture that the courts would have to determine on the application of any railroad company what the rate would be?

Mr. BUTLER. The court could enjoin the rate.

The CHAIRMAN. Very well. Proceed.

Mr. RUSSELL. Would there be any distinction between the Joynes case that you stated at the beginning of your remarks and an attempt by the commission to fix a rate? Would there be any legal distinction between the two cases? One, as I understand, involves the making of a practice or regulation; the other the fixing of a rate. Would there be any difference, so far as the jurisdiction of the court is concerned, between those two cases?

Mr. BUTLER. No, sir; but I think that any action of the commission taken by way of order, either affecting a rate or practice, is binding on the courts.

Mr. RUSSELL. You think the right of the court in either case would be identical?

Mr. BUTLER. I do.

Mr. RUSSELL. Then, if it were denied in the case of the rate, you could not say that it could obtain in the case of a practice or regulation?

Mr. BUTLER. It would be the same.

Now the second point that I wish to suggest is that the Townsend bill contains an express provision authorizing the Attorney-General only to appear on behalf of the Interstate Commerce Commission or the Government in any suit brought in the courts to test the order of the commission.

Mr. RUSSELL. Where is that?

Mr. BUTLER. That is on page 11. No; section 5, on page 10. It also provides that the Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation.

It seems to me that limitation with reference to the commission and its attorneys is a very proper one; and, not speaking for the commission, of course, I think that they would feel that such a limitation is proper, because they would be the last to wish to have any order that they might enter upheld, whether they were right or wrong, and, being semijudicial in character, would not care to be put in the position of defending their own order, which I think has been a source of embarrassment to them up to the present time. But it does seem to me that the shipper who has complained before the commission, and who has engaged his attorneys and educated them in the technical points involved in these transportation cases, and who has gone through an order of the commission and obtained an order of the commission should be permitted to follow that order of the commission, even though the shipper was not a party in proceedings instituted in the court based upon that order. It is a very serious question, inasmuch as such tremendous rights are involved in a great many of these complaints that are filed, and points so highly technical in their nature are included within them. A shipper complaining before the commission of a practice, more usually than a rate, has tremendous interests involved in the subject-matter of his complaint.

Take, for example, the car-distribution cases, affecting the coal industry all over the country. It is immense. Take this transit proposition. It is, really, interests that amount to millions and millions of dollars a year that are involved in these questions of practice. The transit question is an exceedingly complicated one, one of the most complicated questions involved in the transportation problem; and if, for instance, the Chicago Board of Trade should see fit to question any order of the commission and should educate its attorneys through long months, especially in the matters involved in that complaint, and if that institution, when it wanted its attorneys to continue, should be compelled to drop them upon the institution of a suit to enjoin that order, it would be subjected to a great hardship and injustice. It must be remembered that the act provides that any order of the commission shall go into effect, as I remember, in thirty days, so that on any application for an injunction in the court very short notice is given to the attorneys for the commission in which to go to court and become acquainted with the pleadings of the adverse party and to prepare the answer and to prepare for arguments.

This, Mr. Chairman, is the form I suggest:

Page 11, line 18, add:

Provided, however, That any party to a proceeding before the Interstate Commerce Commission in which an order or requirement is entered or made shall, at his own

expense, have the right in person or by his attorneys to file an appearance in any cause instituted in said court of commerce to enjoin, set aside, annul, or suspend said order or requirement, or in the Supreme Court of the United States upon appeal from said court of commerce, and either in person or by his attorneys to file briefs therein and to join in the oral argument thereof in the same manner and to the same extent as though he were an actual party to said cause in said court of commerce or in said Supreme Court of the United States, and shall also have the right to appear and be heard on any application made to said court of commerce to stay or suspend the operation of the order of the Interstate Commerce Commission pending the final hearing and determination of the suit or to the United States Supreme Court to stay or suspend the order of the said court of commerce, and any notice of any application to said court of commerce for any order or injunction to restrain or suspend any order of the Interstate Commerce Commission or to the United States Supreme Court to restrain or suspend any order of said court of commerce shall be served upon the said complainant before the commission.

You will pardon me if I cite an instance in those car cases. The orders were entered by the commission some time in the month of June, as I remember it, 1908, to become effective July 1, 1908. The railroads went in about the 20th of June and filed their separate bills to enjoin those orders, making the commission only a party defendant. Our clients were not made parties defendant, and we did not appear in the proceedings. The attorneys for the commission were sent on, and we very gladly assisted them in preparing the answer on behalf of the commission. I should say "attorney," not "attorneys." The attorney sent on was well versed in the matter. He was capable. He was energetic and diligent. We worked one night until 1 o'clock, I remember, preparing the answer to be filed, and still longer upon the argument of that case, which involved the counting of three different classes of cars, one class being the cars that the railroad could send to the mines to carry away the fuel supply of the railroad.

A question very different in its essential character was there presented from the question involved in the counting of the other two classes of cars, namely, the private cars and the foreign railway cars, and upon being questioned by the court as to the point involved in the counting of the carrier's own fuel supply cars, the attorney simply had to say to the court that he had been so rushed and had worked so hard that he had not opportunity to prepare upon that branch of the case as he would like to have done. The court was to a certain extent without the information that it should have had, that it sought, that it really wanted, and as to that class of cars it enjoined the order of the commission. Upon appeal the Supreme Court reversed the circuit court; but that just emphasizes the fact I have in mind, that where there is a complicated question involved it is almost impossible for the Government to become thoroughly versed in the technical points involved in the questions, and if the client whose interests are so vitally involved wishes his attorney to remain in the case at his own expense, it seems to me that permission should be given.

I am not speaking here as a lawyer. We can keep busy, even though practically by the terms of this act creating the commerce court we are disbarred from practice in that court. But I speak for the interests I represent, very large shippers, people who are vitally interested in this act and in the acts and practices and regulations of the carriers, when I ask that they be permitted if they wish to have their attorneys follow these proceedings and be heard in arguments and be given leave to file briefs.

Mr. ADAMSON. Is it your understanding of it that nobody but railroad lawyers and government lawyers can practice in the proposed commerce court.

Mr. BUTLER. Well, Mr. Adamson, the practical working of the provision will amount to that, except for this, that in cases where the shipper complains of the order of the commission and institutes a suit, in places the Government in defending that order in the position of having to appear in court and take the place of the railroad attorney in defending the order of the commission.

Mr. ADAMSON. So that the Government will be a party to every case, and the shipper in one class of them and the railroad in the others?

Mr. BUTLER. Yes. The cases in which the shipper would appear as complainant would probably be very limited in number.

Mr. ADAMSON. If the shipper gets into court at all, he has to be as an "insurgent" suing the Government?

Mr. BUTLER. He is not permitted to come into court. The act does provide that the Assistant Attorney-General, for whose appointment provision is made, may employ special counsel and arrange for their special compensation. But my clients would be willing to pay their attorney; the gentlemen that I represent would be willing to pay their attorneys.

The CHAIRMAN. I suppose what you simply want is authority given to the Attorney-General to permit private counsel to be heard in the case?

Mr. BUTLER. That is all, Mr. Chairman.

Mr. ADAMSON. Associate counsel without pay?

The CHAIRMAN. At their own expense.

Mr. ADAMSON. Yes.

The CHAIRMAN. That is simply to permit it. You would not take away the power of the Attorney-General to control them?

Mr. BUTLER. Not at all.

Mr. ESCH. In a petition we received yesterday from the Cattle Growers' Association, represented by Judge Cowan, he cites an instance with regard to the cattle-rate cases which involves a terminal charge of \$2 in Chicago, and he cited the record, showing that there were over 10,000 pages of testimony taken by the commission outside of a large amount of exhibits, and that that testimony covered a period of something like six months, drawing the conclusion that unless the attorneys for the Cattle Growers' Association, for instance, were permitted, in representing their clients, to appear at all stages of the proceedings in the Supreme Court possibly injustice might be done. Is that in line with your argument?

Mr. BUTLER. Exactly, Mr. Esch.

The CHAIRMAN. In that case Mr. Cowan was retained and tried the case, I believe.

Mr. ESCH. Yes.

Mr. TOWNSEND. Now, Mr. Butler, here is a proposition that we think will be submitted to the committee in the form of an amendment, striking out section 5 down to the word "attorney," in line 2 on page 11, and before that insert the word "the" down to and including the word "assistant," on page 11.

The CHAIRMAN. What line is that?

Mr. TOWNSEND. Line 2, page 11; insert the word "the" before "attorneys," under the Attorney-General's supervision, in line 3, so that it would simply mean that the Attorney-General shall have charge of and control of all the interests of the Government in all cases and proceedings in the court of commerce and in the Supreme Court on appeal from the court of commerce. [Reads:]

The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation. The Attorney-General, however, if in his opinion the public interest requires it, may retain and employ in the name of the United States such special attorneys and counselors at law as he may think necessary.

Now, you think that would not be sufficient? You want to give it as an absolute right to the petitioner and to the complainant to have his attorneys heard in the commerce court and in the Supreme Court as a matter of right, whether the Attorney-General wanted it or not?

Mr. BUTLER. Yes; the case being subject to the control of the Attorney-General.

Mr. STEVENS. It would not be then.

The CHAIRMAN. Is not this the situation: Under the existing law the Attorney-General is not authorized to accept voluntary assistance?

Mr. BUTLER. I am not advised as to that.

The CHAIRMAN. If he employs assistants, he must pay them now. As I understand it, all you want is the authority given to the Attorney-General to avail himself of the services of these outside assistants without the Government paying them?

Mr. BUTLER. I wanted more than the mere authority. I wanted the right on behalf of the shipper to have his attorney appear.

The CHAIRMAN. You would not want it given as a right for the private attorney to appear and have control of the case against the wish of the government officer who was in charge of the case, would you?

Mr. BUTLER. No, sir; I would not.

The CHAIRMAN. You know what that would lead to at once?

Mr. BUTLER. I understand perfectly.

The CHAIRMAN. Would you not be satisfied if the private attorney had the authority to make application to be heard and the Attorney-General to determine whether it is proper to permit him to be there or not?

Mr. BUTLER. That is not as broad as I had in mind, Mr. Chairman. It seemed to me very properly, if a case was in control of the Attorney-General—that is, as to the making of the record and the control of the record——

The CHAIRMAN. How could it be in the control of the Attorney-General if another man whom the Attorney-General does not want is running the case?

Mr. TOWNSEND. And must be admitted to the argument and briefing of the case?

The CHAIRMAN. Yes; and the presentation of witnesses?

Mr. STEVENS. And making arguments that might differ from that of the Attorney-General?

Mr. ADAMSON. If you ask that, then conversely, when a ruling is attacked by the shipper, would not the railroad attorneys have the same right to come in and insist that the Attorney-General should have their lawyers to help him?

Mr. BUTLER. Yes; the railroads would be represented by the Attorney-General.

Mr. STEVENS. Then the railroads might take advantage of that proposition by making all kinds of outrageous arguments on behalf of the Government and embarrassing the policy of the Government in that and other cases.

Mr. BUTLER. As I had it in mind, Mr. Stevens, it was merely that a party whose order was in question should have the right to enter his appearance and be heard in argument and file briefs, not to conduct the litigation.

Mr. KENNEDY. Would not the court in its discretion have the right to permit anyone to intervene at its discretion, upon application, and be heard, who seemed to have an interest in the litigation without anything being put into this law?

Mr. BUTLER. Well, I think so, Judge Kennedy; but it seemed to me that it was very essential that any shipper whose interests were directly involved ought to have the right to go in and take care of them at his own expense.

Mr. ADAMSON. Don't you think, Mr. Butler, that we ought either to eat our pie or keep it? Ought we not to do one or the other? If we are going to insist on the Government assuming the burden at its own expense and regulating these carriers, must not the Government be put in direct control of this litigation absolutely?

Mr. BUTLER. I did not have in mind that the Government should not direct the litigation and control the case. It is merely that the shipper might be represented there by his counsel in argument and filing of brief.

Mr. ADAMSON. If you are trying a case you would want to say what lawyer you would employ and what argument he would shoot up, would you not?

Mr. BUTLER. That is the right I insist on now.

Mr. TOWNSEND. Have you had complaint under existing law about being heard in cases that are being defended or prosecuted by the commission?

Mr. BUTLER. We have not, Mr. Townsend. We were requested by the Interstate Commerce Commission to file briefs in the Coal Car cases in the Supreme Court of the United States. But I do not think that that is always done, and I do not think that the shipper's rights are properly protected in these vitally important matters. Unless he is obliged to trade horses in the middle of the stream I think he ought to be able to follow his case.

Mr. TOWNSEND. I will say to Mr. Butler that one of the reasons for making this change and turning this matter over to the Attorney-General was that there is conflict of authority now in many cases, and that many of these cases are prosecuted by attorneys who are not competent to handle them; that a great deal of embarrassment has arisen over that very fact. I know of one case myself where a man recently admitted to the bar felt that he was competent to prosecute his own case, and one of considerable importance, and he did it. Now, that man, under your provision, would have the right to demand that he could go in and brief that case and present his argument and view to the court, no matter what the opinion of the Attorney-General might be on that subject.

Mr. BUTLER. That is it.

Mr. TOWNSEND. It seems to me that is going to embarrass the situation. It certainly is not going to accomplish the thing I had in mind in putting this in the hands of the Department of Justice, with the authority, with the permission, of the Attorney-General to secure such assistance as he might deem best. I can not imagine a case like the car-shortage case, like the cattle cases, to which reference has been made, where a competent attorney has carried the cases through—I can not imagine such a case where the Attorney-General would not secure the assistance of that man who was competent to help him in the prosecution of the case.

Now, I am quite in sympathy with the notion of allowing the shippers to pay the expenses if they want to do it, but I felt that there might be cases coming up, where the shipper can not pay the expense, where the Government might well afford to employ assistants to prosecute or defend a case.

Mr. BUTLER. I think there are a great many cases, Mr. Townsend, in which the burden should very properly fall upon the Government, where it affects, for instance, a very broad constituency; but, on the other hand, there are interests that would be very glad to have their rights presented to the court by their own attorneys at their own expense.

The CHAIRMAN. Let me see if I get your idea aright. At present if the shipper wants to make a complaint he has his attorney prepare his original case to go before the Interstate Commerce Commission and present his petition. When it gets before the Interstate Commerce Commission, that commission has some lawyers of their own to try the case before it in some cases, and under the court of commerce it is proposed now to switch and have a third set of lawyers try the case before the court of commerce. Don't you think that is making too many changes to get one case tried?

Mr. BUTLER. Well, I think that the cases that are tried before the commission by its own attorneys are cases in which the Government's attorneys, of course—the attorneys for the Interstate Commerce Commission being of course the attorneys for the Government—would unquestionably be employed right along by the Attorney-General in the future big cases.

The CHAIRMAN. No; the provision says that they shall take no part in the conduct of such litigation, and I take it they would not be continued. The theory is that they will have a competent set of attorneys in the Attorney-General's office for that class of cases.

Mr. BUTLER. The kind of cases I refer to is where the complainant is represented by his own attorney and not by the attorneys of the commission.

Mr. ADAMSON. The supposition is that the commission's lawyers would remain there and be busy while the case was there. They could not go off and try cases elsewhere at the same time.

Mr. BUTLER. I appreciate the objection to this proposition, but the Chicago Association of Commerce, at its executive committee meeting held a week ago to-day—the executive committee consisting of 27 of the members of the association, connected with the largest institutions in that city, wholesale and retail, and bankers, and manufacturers, and merchants—was unanimous and its members were strongly inclined to the belief that they should be permitted to follow their cases.

Mr. KENNEDY. I believe with you that where an able lawyer has prepared his case it would be regrettable not to be able to put it into the hands of some one to present that case, and every particle of the information that he has ought to come before this court. But now, what about the change of law? Under that change I think you would be able to do that. I think the court, through its own discretion, if he makes proper application, will permit him to do that. Ought we to put into the law something that will permit an attorney as of right to come in and assume part of the control of the case? Would not that do more harm than good? That is the question that is up to us.

Mr. MILLER. And if we do that as to the attorneys for the shippers, must we not of necessity do it for the attorneys of the railroad companies, and then will it not be a contest between the attorneys of the shippers and the attorneys of the railroads in a case where the Government of the United States is trying to protect the interests of the shipper?

Mr. BUTLER. I agree with you on that, but there is the case cited by Mr. Esch. If the court were appealed to on an injunction with five days' notice in a case of that kind, it would be a very serious matter if the shipper could not have his own attorney appear.

Mr. ADAMSON. Don't you think both parties ought to be satisfied if the Attorney-General is vested with discretion to admit those voluntary counsel in cases where he thinks it wise to do so?

Mr. BUTLER. I had taken the other view, Mr. Adamson, that the shipper ought to be given the right to be heard in argument and to file a brief.

Mr. SIMS. You do not mean that you want antagonistic control, but simply that you want to work along with the officers of the Government?

Mr. BUTLER. Of course we would be with the Government in defending the order of the commission.

Mr. ADAMSON. And the railroad counsel would be with it when it was defending the interests of the shipper?

Mr. BUTLER. Yes.

Mr. ADAMSON. You do not believe that the railroad would object to the assistance of competent counsel?

Mr. BUTLER. I never had any experience of that, Mr. Adamson. I could not reply to that.

Mr. ADAMSON. You are a lawyer and have seen lawyers practice for a long time, have you not?

Mr. BUTLER. I will say that the attorneys who handled the car cases before the commission were not asked by the commission to appear before the court in Chicago, although the time was exceedingly short and the interests involved very great.

The CHAIRMAN. If you will examine section 8 of my bill, you will find the proper provision, I think.

Mr. BUTLER. I have not studied it very carefully, Mr. Chairman, I regret to say.

The CHAIRMAN. Your people have not studied it from the scientific standpoint, so far as the making of a bill is concerned. [Laughter.]

Mr. BUTLER. Thank you.

Mr. SIMS. Your idea is that vested rights and great interests should not be left to the mere discretion of executive officers in control of the prosecution?

Mr. BUTLER. Yes, sir.

Mr. RICHARDSON. Have you given thought or attention to this feature of the Townsend bill, requiring or creating a court of commerce?

Mr. BUTLER. I have, Mr. Richardson, although the parties for whom I appear have not authorized me to speak on that matter. Still I would be glad to express my personal view on it.

Mr. RICHARDSON. What reason is there for it, if any, in your opinion?

Mr. BUTLER. There was until very recently a most urgent necessity for the creation of a court of that kind, or for some instrument or agency of the Government through which uniformity, stability, and certainty could be secured in these transportation matters.

Mr. ESCH. What has lessened that necessity?

Mr. BUTLER. The necessity has only been slightly lessened, Mr. Esch, in my judgment, by the recent decisions of the Supreme Court in the car cases, and not lessened enough to take away the necessity.

Mr. RICHARDSON. Wherein and how does the Interstate Commerce Commission fail in the exercise of its powers so as not to accomplish the very things you have indicated?

Mr. BUTLER. The commission does not fail. On the contrary, in the judgment of shippers throughout the entire country, I believe, as well as in the judgment of the carriers, the commission has done an excellent service, and has done it well. But the trouble has been that the various courts throughout the country from Maine to California have assumed jurisdiction to review orders of the commission, resulting in uncertainty and confusion, and in the carriers operating in several jurisdictions being subjected at one and the same time to different rules, orders, and requirements of the courts, and not knowing whether they were in contempt of court or violation of those orders or not. The creation of a court of commerce will do away with that uncertainty.

Mr. RICHARDSON. By reason of having exclusive jurisdiction?

Mr. BUTLER. By reason of having exclusive jurisdiction of commerce questions. As I read the act, it does not create a new court; it merely in effect creates a branch of the present circuit court, giving to that branch exclusive jurisdiction of these matters. It would tend to make that court expert, as the commission is held to be expert, in matters affecting the transportation problem.

Mr. RICHARDSON. It would provide by appointment of the President and confirmation by the Senate five additional judges——

Mr. BUTLER. Of the circuit court?

Mr. RICHARDSON. Outside of those judges; new men.

Mr. BUTLER. I think that in all respects the provisions for the creation of the court are admirable, and the idea is one that should be enacted into law. It does not seem to me that the objection that the court might be subject to influence would amount to anything at all. The tenure of office is five years.

Mr. RICHARDSON. Then, as I understand, your real argument for the necessity of a court of commerce is that the federal judges throughout the country, not having any uniformity of belief about these matters, have ruled variously upon the acts and decisions of the Interstate Commerce Commission, and therefore there has been a lack of uniformity in their decisions; and for that reason you believe that

a court that is trained and becomes technically expert is more useful and important in matters of this kind than the ordinary judges throughout the country could be, and more beneficial?

Mr. BUTLER. I think so.

Mr. RICHARDSON. Then how do you meet this idea: Five of these circuit judges who will constitute that court will be designated by the Chief Justice of the United States; they come in here just occasionally; they have the same kind of knowledge that other circuit judges have. What benefit would there be in their service, or what advantage would they have over every circuit or federal judge or state judge, who has got to be competent to take up any question which comes before him? He is supposed to be competent. Why is there any particular reason or peculiarity about this matter of transportation that requires that judges should be technically educated, and because of which we should create an entirely new court for the consideration of such cases? Why should not a farmer have a special court in which farm cases should be tried, or a man of any other avocation have a special court in which matters coming under that avocation should be tried?

Mr. BUTLER. I think there is a very general movement toward securing uniformity of law throughout the entire country.

Mr. RICHARDSON. On that one subject of transportation?

Mr. BUTLER. On a large variety of subjects. I think that is very desirable.

Mr. RICHARDSON. That is, all on the question of rates and things of that kind?

Mr. BUTLER. I assume that in the first place the judges will be selected by the Chief Justice of the Supreme Court, and thus they will be men duly qualified, and that their experience will further qualify them for service on that court.

There is just one other point I would like to refer to, and——

Mr. STEVENS. Before you go into that, just what jurisdiction would this court of commerce have? What would it do? In view of these decisions of the Supreme Court that you have just referred to, defining the power of the commission and defining what jurisdiction the courts have as to the orders of the commission, what jurisdiction would this court of commerce have?

Mr. BUTLER. It would have jurisdiction to pass upon the constitutional and jurisdictional questions with reference to the orders of the commission.

Mr. STEVENS. That is all?

Mr. BUTLER. Substantially all.

Mr. STEVENS. Does that require considerable technical knowledge and a degree of training that the ordinarily good judge would not have?

Mr. BUTLER. Perhaps not to the same extent as might have been said of that court recently.

Mr. STEVENS. So that their field of jurisdiction would be limited—very limited—would it not?

Mr. BUTLER. Yes; limited by the terms of the act, and by the decisions of the Supreme Court.

Mr. STEVENS. And the constitutional questions would go to the Supreme Court anyhow?

Mr. BUTLER. Yes, sir.

Mr. STEVENS. So that practically, then, this court would only consider jurisdictional questions as to the power of the commission to act?

Mr. BUTLER. The constitutional questions would not go to the Supreme Court in the first instance.

Mr. STEVENS. Oh, no; but then finally every constitutional question gets there.

Mr. BUTLER. Jurisdictional questions, I think, could be adjudicated finally in the court of commerce.

Mr. STEVENS. These jurisdictional questions, while important in a way, do not involve any great learning, or any long experience, or any great and wide information, do they?

Mr. BUTLER. Jurisdictional questions?

Mr. STEVENS. The jurisdictional questions of this commission. The law provides what jurisdiction it shall have, and how it shall be obtained, and how exercised. That is very plain, is it not?

Mr. BUTLER. Yes.

Mr. STEVENS. Then the question about jurisdiction would not be so extremely difficult and technical, would it?

The CHAIRMAN. Have there been half a dozen jurisdictional questions ever tried in the United States before all the courts combined?

Mr. BUTLER. I think that question is always raised in all proceedings reviewing orders of the commission.

Mr. STEVENS. It will not be raised very long after the Interstate Commerce Commission gets under way.

Mr. BUTLER. The older the commission grows the more stable its orders will be.

Mr. ADAMSON. It is not probable, is it, that those same five judges would know any more about these questions or pass upon them any more accurately in their new court than they would under their present jurisdiction?

Mr. BUTLER. No; but they would have the benefit of each other's experience.

The CHAIRMAN. You say, Mr. Butler, that you have one other point to discuss.

Mr. BUTLER. Yes; just one, very briefly, and that is on page 9 of the Townsend bill, permitting a judge of the court of commerce to allow a temporary stay or suspension in cases where irreparable damage would otherwise ensue.

The CHAIRMAN. On what line?

Mr. BUTLER. On the lowest line of page 9 of the Townsend bill, permitting a judge to allow a temporary stay or suspension of the operation of the order of the commission. That power is now vested in three judges of the circuit court, and in my opinion it would be a mistake to permit one judge to grant that stay order. I think it should be three, as provided by the act as now drawn.

The CHAIRMAN. This bill as originally drawn, in the several drafts of it that I have, requires four judges to agree to the order, as I recollect it. I am not sure but that it required five of the judges at one time. This, I suppose, is a mere matter of convenience, on the principle that there may not be more than three of those judges here.

Mr. BUTLER. I think if that requirement were inserted in the bill it would tend to keep three here.

The CHAIRMAN. That would not permit them, then, to try cases in other parts of the country.

Mr. BUTLER. Two of them could be away then.

The CHAIRMAN. Two could not try a case in California and decide it, because it requires a majority. Is your proposition to have all cases tried in Washington?

Mr. BUTLER. It is not so contemplated.

The CHAIRMAN. If it was provided that no temporary order could be entered except by three judges, and you had three of the judges in San Francisco, you could not enter the temporary order here.

Mr. BUTLER. That is correct. I did not assume that the entire court would be in session in other places, but that one judge would sit as the court.

The CHAIRMAN. That has been changed so many times that I do not now recall just what it was, but my recollection is that it requires a majority of the court to determine the case. Now this would not permit one judge to determine the case.

Mr. BUTLER. One judge might hear, but the majority would have to determine.

The CHAIRMAN. That is an exceedingly bad practice.

Mr. BUTLER. I agree with you.

The CHAIRMAN. Is that all, Mr. Butler?

Mr. BUTLER. That is all, Mr. Chairman. I thank you, gentlemen, for your attention.

The CHAIRMAN. We are very much obliged to you, Mr. Butler.

Without objection, when the committee adjourns it will adjourn to meet to-morrow morning. I understand that a gentleman desires to be heard in reference to the stock and bond proposition.

Gentlemen, I regret to announce this morning that a former colleague of ours has passed away, Mr. Lovering, of Massachusetts, who was formerly a member of this committee.

Mr. WANGER. Mr. Chairman, I move that out of respect to Mr. Lovering, a former member of this committee, the committee do now adjourn.

The CHAIRMAN. Gentlemen, you have heard the motion. Those in favor will say aye; those opposed, no. The ayes have it, and the motion is carried.

(Thereupon, at 11.45 o'clock a. m., the committee adjourned, to meet to-morrow, Saturday morning, at 10 o'clock).

[The Traffic Bulletin, January 15, 1910.]

DECISIONS OF COMMISSION—INTERSTATE BOARD HANDS DOWN RULINGS IN CONTESTED CASES—CAN NOT AWARD DAMAGES FOR DELAYS.

No. 1611.

(17 I. C. C. Rep., 361.)

H. W. Joynes v. Pennsylvania Railroad Company.

Submitted October 31, 1908. Decided June 29, 1909.

1. Petitioner, a dealer in fruits and general produce, charges discrimination, in that the defendant persistently delayed his shipments of fruit in Pittsburg at the Fifty-fourth street yards, where the cars were not accessible to teams and could not be unloaded by him, while at the same time cars of other shippers were promptly placed in position at the unloading platform and were thus given a preferred use of the defendant's terminal facilities, and that by reason of said delay and discrimination petitioner suffered loss through the decay of the fruit and otherwise in the sum of \$30,497.70, for which amount he claims reparation: *Held*, That the commission is without power under the law to make awards of general damages of that nature.

2. In cases of the nature involved in the complaint the commission may ascertain whether the discrimination alleged actually occurred or whether the carrier has failed in a duty imposed upon it under any provision of the act as charged in the complaint. But the assessment of any resulting damages, other than damages that may be measured by differences in rates, must be left to be determined by action brought in a court of competent jurisdiction.
3. The language of the act being of doubtful interpretation, the commission, which is a special tribunal of limited powers, ought not to take jurisdiction, but should resolve the doubt in favor of the courts where claims of this nature ordinarily belong.
4. Section 15 is the dominating and controlling expression of the real object and meaning of the act in its present form. It makes of the commission what it was undoubtedly intended to be, namely, a special expert body created for the purpose of dealing with the rates and practices of carriers affecting rates, and not a body to take the place of the courts for the redress of alleged wrongs of the character involved in the complaint.

J. J. Foley, E. W. Stowe, and L. K. & S. G. Porter for complainant.

Henry Wolf Bikle, George Stuart Patterson, and George V. Massey for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this proceeding the petitioner, who is a commission merchant at Pittsburg, dealing in fruits and general produce, charges the defendant with having persistently delayed his carloads of fruit at a point on its line in Pittsburg known as the Fifty-fourth street yards, where they were not accessible to teams, and therefore could not be unloaded by him, although during the same time the cars of other shippers were promptly placed in position at the unloading platform and were thus given a preferred use of the defendant's terminal facilities. The result of the alleged discrimination was that the petitioner's fruit "when delivered at the proper destination, was found to be heated, withered, shrunk, and in a rotten condition," entailing upon him a loss, including demurrage, storage, additional help, and loss of trade, in the sum of \$30,497.70, and for this amount he asks an award of damages.

We therefore have before us the general question as to the power of the commission to award damages for losses of that character suffered by shippers in consequence of acts and omissions of carriers that are in contravention of some provision of the act to regulate commerce as amended.

The question is not altogether a new one, and a brief statement of its history before the commission may not be without interest. The first reported case in which the commission was appealed to for an award of damages of this nature is *Heck v. East Tennessee, Virginia & Georgia R. R. Co.* (1 I. C. C. Rep., 495), where the complainant sought to recover pecuniary damages against the carrier for its failure and refusal to accept coal for interstate carriage. The commission declined to entertain the complaint on the ground that it presented a case at common law where the amount in controversy exceeded \$20, and therefore under the seventh amendment to the Federal Constitution the defendant carrier was entitled to a trial by jury. But on the facts shown of record the commission held that the conduct of the defendant in the premises was in contravention of the act to regulate commerce.

In *Council v. Western & Atlantic R. R. Co.* (id., 339) the complainant, a colored man, demanded damages in the sum of \$25,000 for having been forcibly ejected from a car occupied by white people. While holding that the defendant carrier was required under the law to furnish the same accommodations to colored persons provided with first-class tickets as were accorded to white persons holding such tickets, the commission declined to consider the question of damages because it could not give the defendant the trial by jury to which it was constitutionally entitled.

In *Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co.* (id., 594) the complainant alleged a pecuniary loss arising out of an unjust discrimination, and again the commission found that an unjust discrimination existed, but on the same ground declined to award damages. This case was decided in February, 1888.

The question did not again come before the commission until December 1, 1890, when its report was published in *Macloon v. C. & N. W. Ry. Co.* (5 I. C. C. Rep., 84). In the meantime the act to regulate commerce had been amended by the incorporation in section 16 of a provision giving a jury trial in the federal court in case the matter involved in any order entered by the commission upon complaint was founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution. For the first time the commission in that case entertained jurisdiction of a claim for damages of that nature. The case, however, did not attract wide attention, probably for the reason that the complainant was not successful in his action, the commission holding that the proof was not sufficient to justify an award.

From that time forward occasional complainants involving damages of the character in question have been filed with the commission. In all they have not exceeded 15 or 20 in number, for the fact that the commission under an amendment to the law

had announced its readiness to entertain complaints of that kind does not seem to have become generally known. Moreover, while awards were made in some cases, the majority of the complaints were unsuccessful and were dismissed on one ground or another. Since the act was amended on June 29, 1906, several such complaints have been filed and one or two awards have been made; but the question of our authority to exercise such jurisdiction was not seriously discussed before us until the complaint herein was filed. It is our purpose, therefore, now to consider whether under the act to regulate commerce as amended the commission is vested with authority to entertain jurisdiction of complaints of this nature. We shall examine the question as if it were one of first impression.

Notwithstanding the apparently conclusive language to be found in several paragraphs of the act as now amended, we have reached the conclusion that our power to award damages is limited to what for convenience we shall hereinafter refer to as transportation or rate damages, and does not extend to what we shall hereinafter allude to as general damages, being damages of the nature demanded in this complaint and having no connection with rates. This conclusion, as we shall endeavor to explain, is based upon well-defined general principles as well as upon the act to regulate commerce in its present form.

Transportation or rate damages are such as grow out of the collection by carriers of excessive rates, and are measurable by the difference between the rates actually collected on particular shipments, when upon complaint made and after hearing they are found and declared by the commission to have been unreasonable, and the rates which the commission finds would have been reasonable rates at the time such shipments were made. Complaints for the recovery of rate damages also arise where an illegal or incorrect rate is charged or more than the proper freight charges are assessed at the legal rate. As to such matters, as well as to the rules, regulations, and practices of carriers affecting rates, the commission, in the contemplation of the act itself and because of its accumulated experience of twenty-two years and its constant contact with transportation problems, has expert knowledge, and on that ground may speak somewhat with the authority of experts. It is for that reason, as is explained in *East Tennessee, etc., Ry. Co. v. I. C. C.* (181 U. S., 1), that the Supreme Court of the United States has steadily refused to exercise its own original judgment on the facts in rate cases. The court is entitled, as it says at page 27, "to the aid which must necessarily be afforded by the previous enlightened judgment of the commission upon such subjects." Again, in *Interstate Commerce Commission v. Clyde Steamship Co.* (181 U. S., 29), that court, when urged to enter upon an original investigation of the facts in the case for the purpose of considering questions of discrimination, preferences, reasonableness of rates, and relation of rates, declined to do so on the ground that these were matters in the first instance for the exercise of its judgment by the commission. In *Louisville & Nashville R. R. Co. v. Behlmer* (175 U. S., 648), the court says (p. 675) that the law attributes *prima facie* effect to our findings because the commission, "from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising." And in *Illinois Central R. R. Co. v. I. C. C.* (206 U. S., 441, 454) the commission is referred to as a tribunal "informed by experience," and with "knowledge of conditions, of environment, and of transportation relations," and the court indicates that on those grounds *prima facie* effect is given by the law to its orders.

These statements were made by the court in cases in which shippers had complained of the rates or of the practices of carriers affecting rates as this phrase is used in section 15 of the act. Similar statements are to be found in the opinions of other courts. It is therefore to be regarded as settled that the courts look upon the commission as qualified by experience and from the nature of its duties to speak as experts, with respect to the rates and practices of carriers, and that they will ascribe to our findings the weight and conclusiveness that are ordinarily attached to expert opinion. All this is consistent with the general scope of our functions as outlined in the act. It is also the general understanding that shippers may resort to the commission for the redress of injuries arising out of the exaction by carriers of unlawful rates and for the correction of unlawful and discriminatory regulations and practices affecting rates. There was need of the creation of an administrative body for that purpose, for the regulations and practices of carriers, as well as their rates, often give rise to questions of much technicality and difficulty, and such problems are ordinarily beyond the experience of juries and can properly be disposed of only by a body of experts.

On the other hand, it has not been the understanding among the shipping public that the commission was created for the purpose of taking the place of the courts in the disposition of the vast number of litigated cases in which shippers demand of carriers damages of the general nature involved in this complaint. That this is true is demonstrated by the fact heretofore stated that during the twenty-two years of its existence very few complaints have been filed with the commission in which shippers

have sought an award of damages of this nature. Moreover, the opinion of the commission on any such question as that presented here can be of no greater value than the opinion of a jury. We are asked to award damages to the complainant to cover the losses which he claims to have sustained. We are well qualified by our experience with such questions to examine the testimony for the purpose of ascertaining whether the defendant in fact was guilty of a discrimination, as charged by the complainant, in favor of other shippers of fruit and perishable produce. But before we can go further with his complaint we must ascertain the difference between the market value of fruit in Pittsburg at the time when his cars ought to have been placed in position at the unloading platform and the value of his fruit in the condition in which it was when the cars were finally placed at the proper point for unloading. We are also asked to ascertain and put a value upon the loss of trade alleged to have been suffered by him in consequence of his inability to deliver the fruit promptly to the customers who had purchased it. In other cases we have been asked to award damages to complainants, based on the market value of various commodities; to ascertain the amount of the depreciation of an elevator plant, to value the loss of the good will of a business concern resulting, as alleged, from the wrongful acts of the carrier. In another case we were asked to assess damages alleged to have been suffered by a complainant for the shrinkage and loss in weight of his hogs in transit, due to the refusal of a carrier to furnish double-deck cars.

All those claims were based upon the theory that the damages alleged arose out of the violation of some provision of the act to regulate commerce as amended. The various classes of claims that can and constantly do arise out of the negligent omission of carriers to do what they ought to do for shippers, or their negligence in doing what ought not to be done, are too varied to make it possible to attempt here to enumerate them. As to such matters the members of this commission have no expert knowledge or any opportunity to acquire it. The capacity to deal as experts with the large variety of questions that such claims present is, of course, not easily attainable. Each such case would depend upon its own peculiar facts. There is no good reason, therefore, for indulging the thought that the judgment of this commission with respect to questions of that general nature would be any wiser or sounder than the opinion of a jury. As a matter of fact, our opportunities for arriving at the exact truth in such cases would not be so good as the opportunity of a jury. With few exceptions the testimony in contested cases before the commission is heard either before a commissioner sitting alone or before an individual examiner. The commission as a body acquires its knowledge of the facts and reaches a conclusion upon the merits of the issue which the complaint presents only by listening to the oral argument and by studying the record and the briefs. The jury, on the other hand, in the great majority of cases is usually drawn from the district in which the alleged loss occurred, and, besides having the advantage of some knowledge of local conditions, its members have the very great advantage of meeting the witnesses face to face and observing their demeanor and conduct and the manner in which their testimony is given. The impressions thus received by the jury, which all authorities agree are of great value in enabling it to balance and weigh the testimony and thus arrive at the exact truth in any such controversy, can not be preserved in the record or be adequately conveyed to us upon the argument.

When considering a complaint involving the rates or practices of a carrier, the commission, being an administrative body performing its functions in the interest of the general public rather than in the interest of the particular litigants, is entitled to bring to its aid all the information that can be drawn either from the records in other complaints before it or from its general experience and knowledge of transportation matters. The right which courts have to take judicial notice of certain classes of facts is extended in the case of the commission to the entire range of its experience with transportation problems and embraces all the knowledge that it has gathered from any source. In the solution of a particular controversy it is entitled, in the general public interest, to use all available information. We are assumed to know what needs to be known in correctly solving any question relating to the rates or to the rules, regulations, and practices of carriers affecting rates; and where we do not in fact know it is our duty to ascertain what is essential to a proper conclusion. But the value of complainant's decayed fruit and the loss in trade that he may have suffered in consequence of his inability at that time to supply the requirements of his customers are questions altogether beyond the range of our experience. Our opinion on either question, acquired only from a zealous attention to the argument and a careful study of the record, would in the end be simply the opinion of seven men wholly unenlightened by experience or general information as to such matters, and without that opportunity to arrive at the exact truth which a jury enjoys by personal contact with the witnesses.

For these reasons, and for others presently to be mentioned, we have reached the conclusion that the commission may not properly undertake duties of this nature. If it be once firmly established and generally understood that a shipper who has suffered

a damage of this kind at the hands of an interstate carrier, which may be attributed to an act or omission by it in contravention of the many duties and obligations imposed upon carriers by the various provisions of the act, and if it be also understood that we are prepared to deal efficiently with such questions, neither this commission nor any other commission, constituted with some regard to numbers, would be able to keep up with the burden of the labor of that character that will be cast upon it. When our jurisdiction is invoked under a complaint of that nature we can and ought to ascertain whether the discrimination complained of in fact exists or whether the carrier complained of has in fact failed in a duty imposed upon it by any provision of the act as charged in the complaint. Such matters are ordinarily technical in nature, and the justice of such complaints can be determined more readily by the commission than by a jury. But having ascertained the existence of the discrimination or the commission of an act or the omission of a duty, the commission should leave the assessment of any resulting damages to be determined in a formal action brought in a court of competent jurisdiction.

Our understanding of the act is that it gives us a reasonable discretion in entertaining and refusing to entertain complaints that are presented to us. And in our judgment, even if we had the powers which the complainant here seeks to invoke, that discretion is reasonably exercised when we decline, in the general public interest and in deference to the other very important work before us, to deal with matters about which we can know but little and which the courts, where such matters properly belong, can deal with so much more efficiently.

Since its original enactment the act to regulate commerce has been amended many times, without being redrafted as a whole, in order to bring its various provisions into harmony with one another. The result is that the act is not free from inconsistencies, and at some points doubts arise as to its real meaning. If proof of this is needed it will suffice to examine the opinion of the Supreme Court of the United States in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.* (204 U. S., 426), where the court, on the ground that "the act can not be held to destroy itself," found it impossible to give effect and meaning to, and in substance reads out of, sections 9 and 22, language much more definite and positive, in our judgment, than the language upon which the complainant here rests his contention that the commission may award him damages for the loss which he claims to have suffered by reason of the rotting and decaying of his carload shipments of fruits. In considering section 9 of the act in connection with the contention made in that case that its language compelled the mind to the conclusion that it was the purpose of Congress to confer upon the courts the power primarily to make an award of damages on the ground that the rate collected was unreasonable, the court said (p. 441):

"True it is that the general terms of the section when taken alone might sanction such a conclusion; but when the provision of that section is read in connection with the context of the act, and in the light of the considerations which we have enumerated, we think the broad construction contended for is not admissible."

There are several reasons why we ought to approach this very important question of jurisdiction only after taking this broad view of the scope and meaning of the whole act. One very practical reason for this course is that a special administrative body in case of doubt ought not to take jurisdiction, but should resolve the doubt in favor of the courts where such jurisdiction is ordinarily vested. Upon every consideration we must be careful to examine the language of any particular section of the act, not as it stands alone and separate from what is elsewhere said in the act, but in the light of its general purpose as we may gather it from the statute as a whole. This is an elementary rule of construction sanctioned by many reported decisions in the state and federal courts. The principle is strongly stated in *Lessee of Brewer v. Blougher* (14 Pet., 198), where the court says:

"It is undoubtedly the duty of the court to ascertain the meaning of the legislature, from the words used in the statute, and the subject-matter to which it relates, and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it."

We have yet to see in any of the adjudicated cases, in which some provision of the act to regulate commerce was under consideration and in which the object and scope and general character of the duties and functions of the commission are referred to and characterized, a single definite and conclusive expression indicating that the act was intended to confer upon us authority to deal with claims of this nature. That it has not been the general understanding that the commission was authorized to exercise such powers appears with peculiar force, as heretofore stated, from the fact that so few complaints of this nature have been filed with us. All this is very persuasive and lends much force to the contention that no such authority was intended to be given to the commission.

The language of the act upon which the petitioner rests our supposed authority to deal with his complaint seems far from clear. Section 8 of the act, which has sometimes been referred to as giving the commission such powers, will be found upon a more careful reading not to have any relation to the jurisdiction of the commission. It creates a substantive right of action to recover damages for the violation by a carrier of some provision of the act, but leaves the right enforceable only in the courts. Such a right of action having been established, section 9 gives the shipper a judicial forum, namely, a district or circuit court of the United States of competent jurisdiction, in which to "bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act." The same section gives "any person or persons claiming to be damaged by any common carrier subject to the provisions of this act" the right to make complaint to the commission "as hereinafter provided for." The only subsequent provisions to which this clause can relate are sections 13, 14, 15, and 16; and, of these, section 15 is, in our judgment, the dominating and controlling expression of the real object and meaning of the act in its present form. It makes of the commission what is was undoubtedly intended to be, a special expert body created for the purpose of dealing with the rates and the rules, regulations, and practices of carriers affecting rates, and not a body to which shippers might resort for the redress of alleged wrongs of the character involved in this complaint, of which courts have long had jurisdiction and as to which they are fully equipped for doing exact justice.

Our conclusion is that the commission is without power to make awards of general damages of this kind. The complaint must therefore be dismissed, and such an order will be entered unless we are advised by the complainant of his desire to have the commission consider whether, apart from the question of the general damages claimed, the acts of the defendant as alleged in the complaint constituted an undue and unjust discrimination.

LANE, *Commissioner*, dissenting:

The decision of the majority is, as I view it, a surrender of jurisdiction clearly conferred, and thus far exercised without challenge. It is conceded that the facts alleged in this complaint would, if found true, constitute such undue discrimination as is forbidden by the act. It is further admitted that the commission has authority to order the carrier to cease and desist from such discrimination in the future. But the power to redress the past injury by an award of reparation is denied. I can not concur in this conclusion, and shall endeavor to state, as briefly as I may, the reasons for my dissent.

Section 3 of the act contains a sweeping prohibition against "any undue or unreasonable prejudice or disadvantage in any respect whatever." This is broad enough to cover every form of discrimination. The statute would be peculiarly defective if a carrier could with impunity subject a shipper to all manner of discrimination in the delivery of his perishable freight. I can conceive of no form of discrimination which would be more disastrous to a shipper than persistent delay in delivering his perishable freight, while like shipments of his competitors are placed promptly upon arrival at destination. Beyond all doubt, section 3 applies to just such discrimination as is alleged in this proceeding. The case of *United States ex rel. Morris & Co. v. D., L. & W. R. Co.* (40 Fed. Rep., 101) is conclusive upon this point. The court says (p. 103):

"The latter (section 3) is comprehensive enough, standing alone, to include every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service, and such is the judicial construction in England of the term 'undue or unreasonable preference or advantage,' as used in the English 'Railway and canal traffic act.' (17 and 18 Vict., c. 31, sec. 2.)"

The jurisdiction of the commission is coextensive with the mandates and prohibitions of the act. Section 3 has not been changed by the Hepburn law, and sections 8 and 9 have likewise been retained in their entirety. Section 15 has been superseded, but the powers which it conferred are more than covered by sections 15 and 16 of the amended law. The law clearly contemplates that a shipper who has been the victim of discriminatory practices on the part of a carrier shall have a twofold remedy before this commission: (1) An order upon the carrier to cease and desist from the unlawful practices in the future. (2) Redress for the past injury by an award of reparation. By the decision of the commission herein, the second of these remedies is read out of the law. The case of *T. & P. Ry. Co. v. Abilene Cotton Oil Co.* (204 U. S., 426) is cited, but in my judgment that case is in no respect a precedent for the action now taken. Conceding that the Supreme Court found it necessary to read certain language out of the act in order to reach its decision in the Abilene case, that course was necessary in order to give consistency and vitality to the law. It is only

too apparent, as the court says, that if the federal courts as well as the commission were to entertain, in the first instance, complaints predicated upon the unreasonableness of established rates conflicting decisions would inevitably ensue. We owe much to the Supreme Court for this broad construction of the law. It is clear that a contrary decision would have led to infinite mischief. But it is hardly necessary to point out that no possible conflict could arise from the concurrent authority of the commission and the courts to award damages for unlawful discrimination in furnishing facilities of transportation. The cases are in no respect parallel. The following comprehensive statement of the commission's powers is found in the opinion of the court in the Abilene case:

"Power was conferred upon the commission to hear complaints concerning violation of the act, to investigate the same, and, if the complaint were well founded, to direct not only the making of reparation to injured persons, but to order the carrier to desist from such violation in the future. * * * That the act to regulate commerce was intended to afford an effective means for redressing wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the act."

This would seem to be a definite recognition of our authority to award damages for any violation of the act.

In numerous cases the commission has asserted its power to award damages for discrimination in furnishing facilities for transportation and in effecting delivery of freight. One of the earliest of these is the case of *Macloon v. C. & N. W. Ry. Co.* (5 I. C. C. Rep., 84). The defendant had refused to switch cars from its tracks to the tracks upon which the complainant's plant was located unless he promised in advance to pay any demurrage charges which might be assessed, regardless of their legality. This switching service was performed for other shippers without exacting any such promise. It was held that the case came under the prohibition of the third section, which forbids the subjection of any person to any undue or unreasonable prejudice or disadvantage in any respect whatever. It was held, further, that the plaintiff was entitled to reparation, but, the proof of damages being insufficient, the case was held open pending notice of adjustment by the parties themselves.

In *Eaton v. C., H. & D. Ry. Co.* (11 I. C. C. Rep., 619) the commission found that the defendant had subjected the complainant to unjust discrimination in furnishing cars for shipment of hay and grain. Reparation was awarded in the amount of \$200, the business loss which complainant had suffered by reason of the discrimination.

In *Rogers & Co. v. P. & R. Ry. Co.* (12 I. C. C. Rep., 308) it appeared that the defendant had declared an embargo on complainant's shipments of hay and straw. Pursuant to this embargo, seven cars of hay consigned to complainant were refused delivery, and the loss on these shipments, due principally to a falling market, was \$190.70. The commission held that, on proper showing that the shipments were interstate in character, reparation would be awarded in the amount named.

In *Eichenberg v. S. P. Co.* (14 I. C. C. Rep., 250) the commission condemned as unlawful certain discriminations in the furnishing of terminal facilities at Galveston, Tex., the case being held open for further evidence, looking to an award of reparation.

In the case of the *Glade Coal Co. v. B. & O. R. R. Co.* (10 I. C. C. Rep., 226) and *Paxton Tie Co. v. D. S. R. R. Co.* (10 I. C. C. Rep., 422) reparation was awarded for damages resulting from discrimination in the furnishing of cars. (See also *Phelps & Co. v. T. & P. Ry. Co.*, 6 I. C. C. Rep., 36; *American Warehousemen's Assn. v. I. C. R. R. Co.*, 7 I. C. C. Rep., 556; *St. Louis Hay & Grain Co. v. C., B. & Q. R. R. Co.*, 11 I. C. C. Rep., 83; *Miner v. N. Y., N. H. & H. R. R. Co.*, 11 I. C. C. Rep., 422.)

It is suggested that comparatively few complaints involving damages of the character in question have been filed with the commission, but manifestly this has no bearing upon the scope of the authority which the statute confers. It is urged that the exercise of the power to award reparation in such cases would greatly multiply proceedings before the commission, but this, I again submit, does not justify a disclaimer of jurisdiction. The difficulty of estimating damages is likewise without persuasive force.

I can not agree with the holding of the majority that the act "gives us a reasonable discretion in entertaining and refusing to entertain complaints that are presented to us." It is my understanding that whenever a complaint is filed presenting a violation of the act, this commission can not decline to take jurisdiction. In any event, a shipper whose business has been ruined by railroad discrimination would find it difficult to understand why the commission, in the exercise of its discretion, should yield up a part of its salutary power and render itself impotent to redress his wrongs.

Commissioners Clements and Prouty unite in this dissent.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XI

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

JAMES R. MANN, ILLINOIS, *Chairman*.

IRVING P. WANGER, PENNSYLVANIA.
FREDERICK C. STEVENS, MINNESOTA.
JOHN J. ESCH, WISCONSIN.
CHARLES E. TOWNSEND, MICHIGAN.
JAMES KENNEDY, OHIO.
JOSEPH R. KNOWLAND, CALIFORNIA.
WILLIAM P. HUBBARD, WEST VIRGINIA.
JAMES M. MILLER, KANSAS.
WILLIAM H. STAFFORD, WISCONSIN.

WILLIAM M. CALDER, NEW YORK.
CHARLES G. WASHBURN, MASSACHUSETTS.
WILLIAM C. ADAMSON, GEORGIA.
WILLIAM RICHARDSON, ALABAMA.
CHARLES L. BARTLETT, GEORGIA.
GORDON RUSSELL, TEXAS.
THETUS W. SIMS, TENNESSEE.
ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, February 5, 1910.

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Mr. Reporter, you may insert in the record a letter from Representative Dawson, presenting the views of Mr. P. P. Crafts, of Clinton, Iowa, in reference to the effect of the bill H. R. 17536 on the electric railroads.

The letter is as follows:

COMMITTEE ON NAVAL AFFAIRS, HOUSE OF REPRESENTATIVES,
Washington, D. C., February 4, 1910.

HON. JAMES R. MANN,
*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.*

MY DEAR SIR: In the consideration of H. R. 17536, I desire to bring to the attention of the committee the views of Mr. P. P. Crafts, of Clinton, Iowa, general manager of the Iowa and Illinois Railway, which operates an interurban between Clinton and Davenport, Iowa, to that clause of section 9 of the bill which affects electric railways. In a letter to me dated February 1, 1910, Mr. Crafts says:

"That portion of section 9 of H. R. 17536 would certainly be extremely detrimental to the electric railway interests of this country.

"With this clause included there would be placed in the hands of the steam trunk lines a very dangerous weapon, which could be used in crushing already existing electric carriers and could also be used to effectually block future extensions of such lines and the construction of new lines, and would discriminate against communities served by electric interurban railways.

"Unless you already have the figures on hand, I beg to call your attention to the fact that the electric railways in the United States have a track mileage of 38,800, operate 87,200 cars, have a capital stock of \$2,250,000,000, and a funded debt of \$1,872,000,000.

"A great deal of the recent growth of electric interurbans has been brought about by the increase of freight interchange between such properties and the steam trunk lines. The bars have been in gradual process of letting down for the past three or four years, but should some of the trunk lines, backed by the passage of the bill above mentioned with its harmful clause included, attempt to discriminate against the electric lines in the matter of rate division, etc., and the interchange of freight and passenger traffic, development in electric railways would be very materially hindered."

Very truly, yours,

A. F. DAWSON.

Mr. TOWNSEND. I would like, Mr. Chairman, to make a statement to be taken down by the stenographer in reference to the provisions of the bill which we are considering, the Townsend bill, in relation to the issuance of stocks and bonds. Some changes have been made in reference to the provision in the bill 17536 which have arisen from a consideration of the practical application of that provision if it were enacted into a law, and I had suggested that this committee, assuming that it was made up of such fellows as I am myself, not altogether familiar with the financing of railroads, might find some questions arise that we would all like information upon. I therefore suggested that we ought to have somebody here who is familiar with this class of business, and so Mr. Byrne, of New York, was invited at my suggestion by the Attorney-General, who had been asked to select somebody who was familiar with it to appear before us this morning, and it is for that reason that Mr. Byrne appears.

STATEMENT OF MR. JAMES BYRNE, OF NEW YORK, OF THE LAW FIRM OF BYRNE & CUTCHEON.

Mr. TOWNSEND. What is your principal business, Mr. Byrne?

Mr. BYRNE. That of attorney in New York, a general practice, but for a good many years I have examined railroad bonds and stocks, their validity, for various institutions who buy them—insurance companies and trust companies. I have represented a number of railroads at different times as their counsel, usually the smaller railroads, by which I mean not the large railroads like the Pennsylvania or the New York Central. As a matter of fact, I am at the present time the New York counsel for the Seaboard Air Line Railway. I have represented and at present represent reorganization committees of insolvent railroads and other corporations, and have been obliged in connection with this work to become familiar with the statutes of almost all the States and Territories in the country under which railroad securities are issued or railroad corporations are organized and reorganized.

I have considered sections 13, 14, 15, and 16 of the bill as they appear in typewritten form just before me—the proposed bill to create an interstate commerce court. I have considered them as a part of the bill, which may be said to be a bill to prevent stock watering, to insure the payment of par in money or property for every share of stock of a railroad corporation which shall hereafter be issued, and the market value of the bonds; and I have considered whether they cover situations that are sure to arise; in other words, whether they present a method that will work.

The first part of section 13 in the form which I have before me relates, first, to the issuing of stock; second, to the issuing of bonds; third, to the issuing of stocks or bonds to take up notes, for the issuing of which notes the consent of the Interstate Commerce Commission is not required, and for the issuing of what are called collateral trust notes; that is, notes of a railroad corporation secured by the bonds of that railroad corporation as collateral, the issuing of such notes being the method by which the railroads in 1907 tided over those times when it was impossible to sell bonds.

Section 13, in the form in which I have it before me, reads in this way:

That except as hereinafter provided, no railroad corporation which is a common carrier subject to the act to regulate commerce, approved February 4, 1887, as amended, shall hereafter issue for any purpose connected with or relating to any part of its business governed by said act to regulate commerce, as amended, any capital stock or certificate of stock without previous or simultaneous payment to it of not less than the par value of such stock.

That is the general principle of the bill, par for the stock—

Or any bond or other evidence of indebtedness except notes maturing not more than one year from the date of their issue.

I think that "one" is a typewriting error for "two," because in the next page it is "two." It is "one" in the printed bill also. It goes on—

Without previous or simultaneous payment to such corporation of not less than the par value of such bond or other evidence of indebtedness, or if sold at less than par, then of not less than its reasonable market value, which value shall be ascertained by the Interstate Commerce Commission and stated—

Mr. WASHBURN. Excuse me; there is a little variance there, though not particularly material; and perhaps you do not care to be interrupted on those points?

Mr. BYRNE. I am perfectly at the convenience of the committee. It says:

Which value shall be ascertained by the Interstate Commerce Commission and stated in a sealed certificate issued by the commission to the corporation.

This is new.

Mr. TOWNSEND. I intended yesterday to have this in and printed, so that we could have it when Mr. Byrne was here.

Mr. WASHBURN. It is not material, then?

Mr. TOWNSEND. No; it is not material unless we can not understand what Mr. Byrne is talking about.

Mr. BYRNE. It goes on:

And stated in a sealed certificate issued by the commission to the corporation, or to any person or persons intending to organize such corporation, and recorded with the commission.

By that phrase, "to any person or persons intending to organize such corporation," the Attorney-General intended to cover the case before the corporation was organized. The people who were going to organize it could find out from the commission whether or not the commission was willing that the bonds should be issued on the present basis.

What follows is somewhat different from the printed bill:

If the commission shall ascertain that there is no reasonable market value of such bond or other evidence of indebtedness at the date of such certificate, then the commission shall ascertain and state in such certificate the reasonable selling price of such bond or other evidence of indebtedness at such date.

In other words, it might be that "the market value" might be invested with a technical meaning. It does have such a meaning in a number of the States, under decisions. Then it might be said there was no market value; and then the commission would find what was the proper selling value of that security [continues]:

And nothing in this section contained shall prevent the issue of such bond or other evidence of indebtedness if sold at or in excess of the selling price so stated, and no property, services, or other thing than money shall be taken in payment to the corporation of the par or other required price of such stock, certificate of stock, bond, or other evidence of indebtedness, except at the fair value of such property, services, or other thing than money, which shall be ascertained by the Interstate Commerce Commission and stated in a sealed certificate issued by it to such corporation, or to any person or persons intending to form such corporation, and recorded with the commission before the issue of said stock, certificate of stock, or other evidence of indebtedness, provided nothing herein contained shall be construed to prevent a corporation subject to this act from issuing its bonds or other obligations to refund an issue of bonds or other obligations heretofore issued and outstanding to the amount requisite to take up or refund the same.

No issue of stock or bonds shall be made for the purpose of paying or taking up notes maturing not more than two years from the date of their issue and hereafter issued by such corporation for a purpose connected with or relating to any of its business governed by said act to regulate commerce as amended, in an amount greater than will suffice, upon issue of such stock or bonds under the rules hereinbefore prescribed concerning issues of stock or bonds to yield a sum equal to the amount of money actually received by such corporation for such notes, or, if such notes were sold at the time of their issue for less than their face value, to yield a sum equal to the amount of such notes if the Interstate Commerce Commission before the issue of such new stock or bonds shall state in a sealed certificate issued by the commission to the corporation and recorded with the commission that the commission finds that said notes were issued

by the corporation at the price received therefor in good faith and after proper endeavor to obtain therefor their reasonable market or selling value.

In other words, the railroads are allowed to issue short-term notes. Then, when it comes to getting the money to take up those short-term notes, they are allowed to issue new stock or bonds to produce such sum as the commission shall think was obtained in good faith and after proper endeavor by the railroad companies to obtain the reasonable market or selling value of those notes which were so issued without the permission of the commission.

Then this clause, as I understand, is a new one:

No railroad corporation subject to the act to regulate commerce as amended shall hereafter, for any purpose connected with or relating to any part of its business governed by said act, issue any capital stock convertible into other capital stock of such railroad corporation, unless by the terms of the certificate representing the stock so convertible the amount, par value, of capital stock that the holder of such certificate is entitled to receive in exchange therefor shall be equal to or less than the par value of the shares of stock represented by such certificate of convertible stock.

In other words, when a share of preferred stock is issued, it shall be permissible to provide in it that the preferred stock can be converted into common stock, provided no greater amount than the par value shall be issued.

Mr. TOWNSEND. Why has that been put in?

Mr. BYRNE. In the first place, preferred stock is usually issued at a time when it is necessary to do it in order to raise money for the purposes of the railroad, and thereby the common stock is put at the disadvantage of not getting any dividends until the preferred stock gets them, and yet the common stock may ultimately have a chance. The growth of the country may be such that the common stock might pay more eventually than the preferred stock. The preferred stock might be a 4 per cent stock, for instance. The only reason the companies had preferred stock in the first place was because that preferred stock had a preference over the common stockholders and could be sold more easily. In the course of time there is the chance to remove a sort of hostility that there always is in a corporation between the preferred stock and the common stock. It will be said by the preferred stockholders that the dividends are not being paid them in order that the common stock may be benefited, and the common stockholders say that the dividends are being paid on preferred stock when they ought to be really kept for the general good of the property and be put into the property, replacing cars, and all that, instead of being paid out in dividends.

But, at any rate, I can see no reason why, if for the finances of the railroad it should seem desirable, there should be more than one class of stock ultimately. There should be no objection to that being done, provided that no watering of the stock is possible; provided you never are allowed to exchange a share of stock for two shares of stock, or a share and a half. But as a matter of fact, for reasons connected with the general business, it has been found to be a desirable thing that the preferred stock generally should be given a right to be transferred into common stock. The laws of most of the States, or many of the States, provide that the preferred shares may be exchanged for common stock on such terms as the companies agree upon.

This part of the bill is to provide that under no circumstances shall stock be exchanged in such a way that there shall be a greater amount of stock out after the exchange than before.

Now, the next clause seems to me to be a very important one. As I say, it was the method that most of the——

Mr. KENNEDY. Just a question there. Preferred stock can usually be paid off, can it not?

Mr. BYRNE. It can under the laws of many of the States.

Mr. KENNEDY. Why could not the railroads, in place of exchanging for their common stock—of course that would be between stockholders?

Mr. BYRNE. Yes.

Mr. KENNEDY. You are talking of an exchange to be effected by a general rule of the road?

Mr. BYRNE. Yes, sir.

Mr. KENNEDY. Why should they not pay off the preferred stock? That is a method of raising money to tide them over a stringency?

Mr. BYRNE. Yes, sir.

Mr. KENNEDY. Now, when they become prosperous, why should they not use the money in payment of the preferred stock?

Mr. BYRNE. In many of the States the stock is not allowed to be redeemed so long as there is any creditor of the corporation. For instance, suppose a railroad company has \$10,000,000 of bonds and \$5,000,000 of preferred stock and \$5,000,000 of common stock. Now, the principle in New York, for instance, is that no stockholder shall ever be allowed to withdraw any part of the capital until all the debts are paid.

Mr. KENNEDY. That is right.

Mr. BYRNE. It might turn out in five or ten years that that \$5,000,000 was needed, and it might be found that things have so changed that the road is not worth the amount of the bonds, and then it would appear that after that debt had been contracted those stockholders had received part of the capital of the company.

Mr. WASHBURN. But there is no law as between the preferred and common stockholder that would prevent the issue of the preferred stock with the condition that it might be called at a fixed price as between the road and the stockholder?

Mr. BYRNE. No, sir. It would be solely with regard to the rights of the creditors. In the next paragraph:

Nothing in this section contained shall be construed to prohibit the mortgage or pledge by any railroad corporation, subject to the act to regulate commerce as amended, of any bond or other evidence of indebtedness, issued by such railroad corporation, as security for or as part security for any bond or other obligation issued by, or loan made to, such railroad corporation which shall not be issued or made in violation of this act.

In other words, that allows a railroad corporation to do what nearly all of them had to do two years ago—issue five million of notes, secured, say, by ten millions or seven and one half millions of their own bonds—when the conditions may be such that people will not buy long-term bonds, but will buy short-term notes provided they think the notes have ample security.

The CHAIRMAN. There is a difference in the rate of interest, I take it?

Mr. BYRNE. Precisely. In other words, if the railroads were compelled to sell their bonds for anything they would bring, they

might get fifty for them, which would be equivalent to borrowing money for 15 per cent or more, while if they can issue these notes at 5 per cent, the notes may sell at ninety-eight or nine, provided they have what the purchaser considers ample security in the bonds of the corporation. Now, the danger might be in that if those notes were not paid you would have bonds to twice the amount of the notes sold on the stock exchange some day without notice, and instead of having five millions of notes outstanding, you would have ten millions of bonds when you had received pay for only five millions of notes. The following clause is to prevent that [continues reading]:

Provided, That the terms of said loan and of such bonds or other obligations, if any, shall provide that none of said bonds or other obligations shall, upon nonpayment of such bonds or other obligations or upon nonperformance of any of the conditions thereof, be sold or become the property of the maker or makers of said loan except at or through public sale, notice whereof shall be published at least once a week for not less than three successive weeks prior thereto in at least one daily paper of general circulation in the city of New York and in at least one daily paper of general circulation in the place where such sale shall take place, if the same is not to occur in said city of New York.

In other words, the endeavor is to protect the sale of that collateral by ample notice. As a matter of fact, all these railroads which issued those notes in 1907 have since that time sold enough of the bonds on a more favorable bond market to take up the notes. For instance, you will see in the mercantile papers an advertisement of the Southern Railway that their three-year notes, payable in 1910, are now to be paid off, because they are able to pay them off, because the general bonds for the payment of the notes were sold in the last six months. Even the strongest railroad had to sell those notes. The Atlantic Coast Line had to do it. I am not sure that there were bonds as collateral for its notes, but it did sell short-time notes. Mr. Rogers had to do it. He issued notes secured by all the bonds of the Virginia Railway with his personal indorsement.

The CHAIRMAN. What were these notes issued for? What was the money used for—for paying dividends?

Mr. BYRNE. No.

The CHAIRMAN. In part?

Mr. BYRNE. No; I think not, Mr. Chairman.

The CHAIRMAN. They paid dividends?

Mr. BYRNE. They went on paying dividends, and if they had not paid dividends for a number of years they would not have had to borrow the money. But the companies were earning ample money. For instance, the Atlantic Coast Line was earning ample money to pay its dividends, but it was buying equipment on a large scale. It was double tracking its road, and it was getting the road ready to take the business which in 1907 had flowed in on all those three roads—the Southern and the Atlantic Coast Line and the Seaboard Air Line—in such a way as to check traffic, meaning that in the spring of 1907 all these roads had their expenses run up so enormously that it appeared as if they were all on the verge of ruin, and the reason was that the business had come on so suddenly and they were so unprepared for it with equipment, and so much of their lines were single lines, that they all proceeded at once to get into shape where they would not be ruined by a large amount of business.

Mr. KENNEDY. I suppose they had entered into contracts to double track their roads, and incurred obligations, and then when the suspension came they could not stop their work?

Mr. BYRNE. Yes; to a great extent. They had gone on making their contracts for improvements on the theory that they would be able to sell bonds; and nobody would buy their bonds.

The CHAIRMAN. One reason why I ask is because we have been frequently told by railway officials and the press and in various ways that after the passage of the Hepburn Act the railroads were prostrated by reason of that. You said they went ahead, following that, to prepare for an immense business.

Mr. BYRNE. I know those three particular roads that I speak of did.

The CHAIRMAN. Regardless of the Hepburn law?

Mr. BYRNE. Oh, yes.

The CHAIRMAN. You do not think that the Hepburn law had that effect of paralyzing the railroads?

Mr. BYRNE. I think at that time the effect of nearly everything paralyzed them. One of the Senators, I think, from Dakota said that the trouble with the railroad officials then was that they all had nervous prostration. I think at that time that everything fell on them at once. I mean that the legislation in so many States—the 2-cent fare bill, and all—coming at the same time, they had so much law to attend to. A railroad going through a number of different States had to deal with the various commissions, and that in connection with the great prosperity in one way, and the lack of discipline which came from a great many reasons—I think all of those things at one and the same time gave the railroads a great deal of trouble in the spring of 1907.

Mr. TOWNSEND. There was not anything in the Hepburn law that you have discovered which was in itself antagonistic to the best interests of the railroads?

Mr. BYRNE. At that moment I was too busy with the roads with which I was connected, trying to see that they were tided over the hard times of 1907, and from that time on I have not given much consideration to the Hepburn bill. But it does not seem to me that there was anything in that which injured the railroads.

Mr. STEVENS. I would like to ask, in connection with that paragraph that you have just been discussing, if there is anything worthy of consideration in this suggestion: That where a railroad like the Atlantic Coast Line was legitimately earning and paying dividends in due course, and was preparing to care for additional traffic in the usual way, and this panic came on, by which it could not raise ready funds to care for the current expenses and this additional equipment and extension, that it was the best for the property and for the public that the railroad should not cease its dividends and divert that dividend fund to paying for those things, but to borrow the money by these short-term notes, because the credit of the railroad would be more impaired by ceasing its dividends than it would be by borrowing on these short-term notes. I would like to have your view on that.

Mr. BYRNE. I agree absolutely with your suggestion. I think that would introduce complete disorganization, if a road which was a successful and prosperous road should stop paying dividends at the time it needed money, which, under ordinary circumstances, it would borrow.

Mr. STEVENS. Now, why? Just place in the record the reason why that is the case.

Mr. BYRNE. Well, in the first place, I think it is of the greatest importance that stocks and bonds should have the confidence of the whole community; that if any person, in however modest circumstances, is able to save \$100 or \$1,000, he should be able to put it into the stocks or bonds of a corporation with confidence. He can not put it into any such security with confidence if, when he knows that corporation is a prosperous corporation, he finds its income suddenly shut off. He will be told by all sorts of people that that is an attempt to freeze him out by the corporation; that the insiders are shutting down in order that they may get his stock. Notwithstanding that, he will be alarmed and there will be a fall in the stock and probably then he will get still more frightened and sell it out. I think that anything which interferes in the slightest degree, except in so far as is absolutely necessary for carrying out some general rule of conduct, with the steadiness of value of the security is a harmful thing for the country at large. I look to the time when, with such changes as are going to be made with regard to the issuance of securities, they will get a certainty and security and steadiness of selling price that they have never known in the past. I think that anything which would mean sudden stoppage of the income on the security, when that income is stopped not because it was not earned but because it is inconvenient for the corporation to pay, would be a harmful thing. That would be the chief thing in my mind.

In the second place, it does not seem to me to be fair that if a property is earning something—and every one would say it was legitimate that those earnings should not be used for improvements, but that the funded debt should be increased in order to make the improvements—I think it would be unfair to the man who is dependent upon his income that is produced by his stock, if he should not get it. A well-to-do man and a man who knows all about railroads could afford to wait for a year or two years, but I think a poorer man, or a man less familiar with finance, would be very much frightened.

Mr. RICHARDSON. Are you through with that question on that line?

Mr. BYRNE. Yes.

Mr. STEVENS. Just to sum it up, this sort of a provision is for the protection of the smaller and poorer investor?

Mr. BYRNE. Yes; and the more particularly of what one might call the weaker roads, and because it is a situation which the past has shown is bound to arise, that at certain times people will not buy what are called long-term bonds.

When I say this, Mr. Chairman, I use the name of a railroad merely as an illustration. I think I referred to the Atlantic Coast Line. It had not occurred to me that this was being taken down. Would there be any objection to my cutting that out and putting in the words "strong road?"

The CHAIRMAN. I do not see any objection to putting them in.

Mr. BYRNE. There might be an objection on their part to my mentioning it, but I was using it merely as an illustration.

The CHAIRMAN. They all issued notes, as I understand it?

Mr. BYRNE. Yes.

Mr. RICHARDSON. I notice in section 13 of the Townsend bill that there is an exception to the rule that applies to the issuance of capital stock, stock or bonds; that is, notes maturing not more than one year from the date of their issue.

Mr. BYRNE. Yes.

Mr. RICHARDSON. Well, now, does not a subsequent paragraph of this bill in effect subject those notes maturing within one year or less to the same rule that is applicable to the issuance of bonds or stocks?

Mr. BYRNE. One might say substantially so. It does allow a railroad corporation to-day to issue a note without the consent of the commission, but it provides that the railroad company shall not be able to issue bonds or stocks to get the money to pay off that note until the issuance of those stocks and bonds has been authorized by the commission under the rule.

Mr. RICHARDSON. Subjecting the note to be issued for twelve months or less than twelve months to the same rules that would apply to railroads issuing other stocks and bonds in effect?

Mr. BYRNE. In effect, yes; but practically this is the procedure, as I understand it: A railroad might issue its note to-day, payable in a year, for \$100,000, and it sells that note for \$90,000. At the expiration of a year the railroad faces the problem of how it is going to get the money to pay off that note. It has got to pay \$100,000, and it received \$90,000. Now, the commission may allow it to issue bonds so as to produce \$100,000, if the commission believes that that note was originally put out and the railroad company received the fair value of that note.

Mr. RICHARDSON. What I am trying to ascertain is this: In the latter part of the paragraph on page 31, "to procure for such a corporation upon sale of the notes at par or at their reasonable market value." How do you construe who is to determine that reasonable market value? Does it apply to the commission?

Mr. TOWNSEND. It is worded so in the amendment. In a proposed redraft of that provision specific reference is made to the commission.

Mr. RICHARDSON. In a redraft?

Mr. TOWNSEND. Yes.

Mr. RICHARDSON. I had not seen that. It looks to me from this paragraph, from the way it reads, that the reasonable market value—the power or the authority to determine what the reasonable market value is—is not clearly disclosed in that paragraph.

The CHAIRMAN. As I understood the redraft, the power of the commission is to fix the price when there is no market value.

Mr. RICHARDSON. I would like to see that.

Mr. TOWNSEND. As I said, Mr. Richardson, I expected yesterday morning or day before yesterday and the day before that to have a redraft ready to present to the House yesterday morning, so that we would have it before the committee to-day; but we did not get around to do that.

Mr. RICHARDSON. It miscarried?

Mr. TOWNSEND. Yes; and we invited Mr. Byrne to be here to-day. While it puts us to some disadvantage and necessitates our reading the evidence of Mr. Byrne carefully as he goes along, yet I thought it best to have him make his statement now.

Mr. RICHARDSON. You do not understand me, however, as complaining?

Mr. TOWNSEND. Oh, no.

Mr. RICHARDSON. Then in redrafting, the point I am calling your attention to is clearly stated?

Mr. BYRNE. That is true [reads]:

If such notes were sold at the time of their issue for less than their face value, to yield a sum equal to the amount of such notes if the Interstate Commerce Commission before the issue of such new stock or bonds shall state in a sealed certificate issued by the commission to the corporation and recorded with the commission that the commission finds that said notes were issued by the corporation at the price received therefor in good faith and after proper endeavors to ascertain therefor their reasonable market or selling value.

Then after this question of the collateral notes there is this proviso:

Provided, further, That if such bonds or other obligations, if any, shall provide that the owners thereof shall have the right to convert said bonds or notes into such bonds or other evidences of indebtedness so mortgaged or pledged—

That is what is called a convertible note. The most common form of a convertible note or bond is one which allows it to be converted into stock, but sometimes a note is put in, and to secure that noted bonds of the corporation are pledged. Then it is put in as a provision of the note that the holder can exchange that note for a bond.

Now, this provides:

That if such bonds or other obligation, if any, shall provide that the owners thereof shall have the right to convert said bonds or notes into such bonds or other evidences of indebtedness so mortgaged or pledged, the Interstate Commerce Commission, previously to the making of such loan, shall have ascertained and stated, in a sealed certificate issued by the commission to such corporation or to any person or persons intending to organize such corporation and recorded with the commission or otherwise, as authorized by this act, the reasonable market or selling value of such bonds or other obligations.

In other words, if notes of \$1,000,000 are secured by bonds of the corporation for \$2,000,000, that note may provide that it shall be convertible into bonds, but the Interstate Commerce Commission shall determine first what the selling price of those bonds is. For instance, suppose the note is sold at ninety, a 5 per cent note, and the bonds containing the commission's certificate are salable at eighty. Then only may those notes be converted into bonds at that ratio.

Then there is this general clause, which relates to the past [reads]:

Nothing in this act contained shall in any way affect or impair the validity of any mortgage or pledge of any capital stock, certificate of stock, bond, or other evidence of indebtedness now mortgaged or pledged as security for, or as part security for, any loan heretofore made to any such corporation, or to prohibit the sale upon foreclosure or otherwise of any such mortgaged or pledged stock, certificate of stock, bonds, or other evidences of indebtedness, upon the terms and conditions provided in the instrument, if any, whereunder such securities may have been pledged or in the contract of loan; and nothing in this section contained shall be construed in any way to prohibit or affect the issue of any capital stock or the delivery of any certificate of stock or the issue of any bond or other evidence of indebtedness in exchange for any capital stock, certificate of stock, bond, or other evidence of indebtedness now outstanding, on such terms and conditions as may be provided in the certificate of stock, bond, or other evidence of indebtedness now outstanding.

In other words, the act shall not interfere with the rights that are given to the outstanding security. For instance, there are notes or bonds outstanding, and this act is not to be construed to prevent the carrying out of these existing contracts.

Mr. TOWNSEND. Why do you think that is necessary?

Mr. BYRNE. Well, I suppose as a general thing that Congress, while it may be a question whether it is bound or not, desired not to interfere with any outstanding contract.

Mr. KENNEDY. It could not if we wanted it to, under the Constitution.

Mr. BYRNE. I do not think it can, but there is that distinction that is sometimes drawn between the right of a State not to pass any law impairing the right of contracts and the right of Congress to do that. In other words, I would not be so absolutely certain that Congress might not impair the right of contract. The decisions are against it, but the decisions are not as clear as with respect to the States.

Mr. WASHBURN. You mean the obligation and not the right of the Nation or State not to pass the law?

Mr. BYRNE. What I mean is that the Constitution says that no State shall pass any such law, while there is no such express provision that Congress shall not do it.

The CHAIRMAN. But we pass such legislation, so far as that is concerned, which interferes?

Mr. BYRNE. Yes; the railroad-rate legislation, for example. In other words, any such language as that would be intended, as I assume, by Congress to be done only in very exceptional cases; and when Congress was legislating with regard to a regulation like this it would take care to say that it did not intend to interfere with any right which had been already conferred under the existing law.

Mr. TOWNSEND. Now, Mr. Byrne, if we were to do that, is it or is it not your judgment that that would materially interfere with the industrial development and improving conditions of the country?

Mr. BYRNE. I think it would result in very great confusion and very great alarm and shock on the part of people. For instance, you would see in these quotations some convertible 4 per cent bond selling for 110 or 115. That is selling at that price because when it was issued years ago it was given an option to be exchanged for stock either at par or some higher price, which was worth very little or nothing at the time the bond was issued but has become valuable now.

The CHAIRMAN. The object of this legislation is to prevent the recurrence of some things which have occurred recently; but would not the declaration you speak of be a declaration of approval by Congress of those things which have already occurred and which we wish to inhibit in the future?

Mr. BYRNE. Well, now, the particular case, Mr. Chairman, would be this: Suppose that ten years ago a bond was issued which provided that it might be convertible at the option of a holder into stock of that company at par and the stock of the company at the time that contract was made was not worth 50 and it is in a newer portion of the country where there has been great development, and the stock of that railroad has become worth 125. Now that bond sells in the market by reason of that contract which is contained in it to the effect that it may be exchanged at any time for a share of stock for 125. It is therefore worth 125.

The CHAIRMAN. Why is it not so exchanged?

Mr. BYRNE. Because the man holding it may say, "I have got my certainty of 4 per cent. I may exchange it at any time I want to."

The CHAIRMAN. He has not exchanged it, up to date, so that it can not be worth very much more. He has not exercised his right, and it is purely a future contingency as to whether it will be worth anything more to him?

Mr. BYRNE. Yes; but it is a contingency for which the present holder may have paid 10 or 15 per cent to buy. And furthermore, as one of the gentlemen has just said to me it may be that that right to exchange has not yet accrued. For instance, sometimes the bond says that "at any time after ten years from date this bond may be exchanged for a share of stock in the company." There may be various conditions, but the fact is that there are large numbers of these securities which have sold at a higher price than they would sell as a simple evidence of indebtedness, because of this right which had been given to the holder of the indebtedness at some time or other to exchange it for stock.

The CHAIRMAN. Is it not also true that a large number of these securities which have been issued purely as water in the last few years contain some provision which may become quite valuable in the future under certain contingencies; and which contingencies would be saved by this clause?

Mr. BYRNE. I do not think of any.

The CHAIRMAN. Is there not something of that sort in the Chicago and Alton securities?

Mr. BYRNE. I do not know; I imagine not. I imagine that when that transaction was over, when the securities were out, that was the end of it. So far as they got out those 3 per cent bonds which they sold at 96 and which subsequently went down to 65, they got out the stock, and everything that was essential to that transaction was done at the time, and now they simply have their bonds and stocks like any other railroad.

The CHAIRMAN. I had in mind certain contingencies in some of these securities which they might want Congress to approve.

Mr. BYRNE. I think the feeling of the community would be this: So far as the future is concerned, if Congress deems it desirable that no stock of a railroad should be issued except for par, and that no bond should be sold except for its market value, whether that is wise or not, no injustice at any rate is done to any one who hereafter takes such stocks or bonds or anybody who forms a railroad, knowing that that is the law. But so far as that can be done without interfering with that general scheme of Congress for the future, people who have bought securities, supposing they have certain rights, should continue to have those rights.

The CHAIRMAN. But suppose people have issued securities for themselves? Do you think we ought to give our approval to those issues? In other words, to cover your proposition, would it not be sufficient to authorize the administrative body that we confer certain power upon with reference to this to determine whether those provisions could be given effect in a particular case?

Mr. BYRNE. What this says is that this law "shall not prevent." I mean, it does not authorize anything; but it says that nothing in this law shall prevent those contracts which now exist from being performed.

The CHAIRMAN. That is a practical expression of our approval.

Mr. BYRNE. It would hardly seem to be so to me; but of that matter, whatever the purpose is, I only mention the various cases where one can see that that question would legitimately arise. For instance, a note was sold five or six years ago by a man who bought it because of a provision in it that it could be convertible into stock, and the

idea is that this act, of course, should say, "we do not interfere with that."

The CHAIRMAN. Is it not perfectly safe to leave the determination of that matter in a particular case to the approval of the administrative body that we select for that purpose—the Interstate Commerce Commission, for instance?

Mr. BYRNE. I do not know, Mr. Chairman, that my judgment is of any value on that; but, so far as I have a judgment, it would be that this act ought in terms to say that it is not intended to interfere with any contract rights which the holders of securities now have. I think that if in every case they would have to go before the commission very great confusion would result. It would be impossible to explain to the particular holder of the security why the plain contract of the corporation with which he dealt was not being performed. He would not understand it. He would think that the corporation was trying in some way or other to cheat him if he had a note which said that on a certain day he could present it to the corporation and receive stock for it and he went there and the corporation said, "Oh, no; we can not do it, or can not do it until we apply to the commission." I am afraid the holder of that note would simply think the corporation was trying to cheat him.

Mr. KENNEDY. As a matter of fact, in the future the holder of the note would not have any contract right in entering into that contract with the corporation if he knew all the time that its power to issue stock might be regulated?

Mr. BYRNE. Yes.

Mr. KENNEDY. And if we left it discretionary with the Interstate Commerce Commission to control that matter, I think it would be altogether proper for them, where the note was in the hands of the original purchaser, to take one action, and if it had been sold and gone onto the market, a quite different action might be proper and right.

Mr. BYRNE. Yes; there would be a vast amount of such cases arising. It would be a very great labor, and I should think that the number of cases in which any one of the committee would say that there was anything wrong or calling for interference, or that you would have checked if you had a whole thing to do over again—I think, compared with the vast amount which any one of us would say was absolutely right, it would be a very serious question whether the good that would come would be equal to the possible confusion. But on this I just throw out my own impressions of the way it would seem to me.

Mr. TOWNSEND. Would it be possible, Mr. Byrne, under those conditions, for innocent stockholders who have been deceived by speculators to get frightened and dispose of them?

Mr. BYRNE. That is one of the things that occurs at any time when anything goes wrong with a corporation, or anything happens which is unusual. I mean these people would undoubtedly be told that there was no just ground for the railroad refusing to give them what the railroad had agreed to give them in that security, and they would be told that it indicated a plan on the part of the corporation to freeze them out and to injure them in some way or other. I mean those are some of the things which occur to me as the possible dangers; and so long as my opinion has been asked, I am very strongly of the

opinion that the number of possible cases which the committee or the commission or anyone else would desire to reach, compared to the great body of perfectly innocent and proper things, is not worth the trouble of doing anything except saying that the act is not intended to apply to contracts which have heretofore been made.

Mr. KENNEDY. So that the question is only one of policy, whether or not we had not better wipe the slate clear or do something that will quiet suspicion and trouble and stop misdoing in the future?

Mr. BYRNE. Yes, sir. In general, you are looking to the future in this act, and that leads up to the next point.

Mr. RICHARDSON. What is your opinion as to how this act with respect to rules and regulations about the issuing of capital applies to the creation of a new and independent railroad?

Mr. BYRNE. You mean whether it is helpful or would hinder?

Mr. RICHARDSON. How does it apply? Will it control and regulate it?

Mr. BYRNE. Undoubtedly. I think it means that if a railroad should be built to-morrow—

Mr. RICHARDSON. Independent of any other?

Mr. BYRNE. Yes; independent of any one. It would be allowed to issue its stock only for \$100 for each share of stock, in cash or property of the value of \$100 for each share of stock.

Mr. RICHARDSON. How would you regulate that? A great many of the States have passed laws on that subject. Would it not require, for instance, before you created an organization of that kind, that 25 or 50 per cent of the capital stock must be paid in money before they can go to work; that is, in some States?

Mr. BYRNE. This act requires that at the same time that the stock is issued, simultaneously there shall be received \$100 in cash or \$100 worth of property.

Mr. RICHARDSON. Who is to estimate the value of the property? Is it the Interstate Commerce Commission?

Mr. BYRNE. Yes; the commission.

Mr. RICHARDSON. Is not that a pretty drastic rule upon an organization of a new and independent line?

Mr. BYRNE. I do not think that on that question my opinion is of any value at all.

Mr. RICHARDSON. I think it is. I mean I am very much interested in what you have been saying.

Mr. BYRNE. What I mean to say is this, that what I thought might be of some use to-day, so far as I am concerned, would be some things which I could state are bound to occur, some of the situations, and not venture to give my opinion as to whether they ought to be provided for or how they should be provided for; but simply to state that they would arise, and that this bill ought to cover them. But as to the general wisdom or policy of not allowing stock to be issued for less than par in a new enterprise or an old one, that is a matter of policy which this committee is called to pass upon, and as to that my opinion would not be of any great value.

Mr. RICHARDSON. I appreciate your feeling as to that. The reason I was asking was simply to benefit from the value that attached to your opinion about these matters. We are trying now to get the real facts and the truth, and sometimes, incidentally, we get very valuable facts from men who do not claim to know much about special lines.

Mr. ADAMSON. I would suppose that Judge Richardson's special instances were cases where installments were called in, and the stock was not made absolute until the installments were called in.

Mr. BYRNE. Yes. In some of the States there is a provision that the railroad shall not be incorporated until subscriptions of so much a mile shall be paid in.

Mr. ADAMSON. I know of cases where installments are called in, but the stock is not made absolute until it is all paid in.

Mr. RICHARDSON. There are a number of instances where the States require 25 per cent or one-fourth of the capital stock to be paid in money or property of equivalent value before the corporation can go into operation at all.

Mr. BYRNE. Yes. I suppose in that case both laws would have to be complied with—this one and the state law.

Mr. RICHARDSON. The Federal Government would have supreme control and authority over interstate railroads, but the state law would apply to the road within the limits of a State?

Mr. BYRNE. Yes.

Now, this section 14 is intended to cover two things—the consolidation of railroads and reorganization. In regard to the reorganization as it is drafted now in the typewritten copy, it provides that if a railroad incorporated previous to January 1, 1910, goes into the hands of receivers and is sold at judicial sale and a plan to reorganize that road is put out the new company which will own that road after reorganization may issue stocks and bonds which shall not be in excess of the amount of those of the company which is reorganized. In other words, suppose a corporation, a railroad, has a capital stock of \$5,000,000, and there are 5,000,000 bonds outstanding, and it goes on for some years, and finally it goes into the hands of a receiver, the ordinary way in which that situation is dealt with is that the reorganization committee calls for a deposit of these bonds and stocks under an agreement which provides that the property shall be sold at the foreclosure sale; that it shall be bought in in behalf of the committee representing the bondholders and stockholders and that it shall be sold to the new company, and that that new company shall issue its bonds and stocks, which shall be distributed to the holders of the old bonds and stocks; and as a part of that plan the old stockholders contribute some new money, which goes into the treasury of the new company in order to get the company in proper condition. It usually turns out that by the time the road goes into the hands of a receiver its roadbed is in bad condition. In other words, it needs money to get in good condition.

Now, this is what is intended: That nothing in this act shall prevent that new company from issuing bonds or stocks to as great an amount as those of the company reorganized. I have in mind some particular cases. I know, for example, of a street railroad which was built in New Hampshire, and \$7,000,000 bonds, proceeds, were put into it. It was in the country and the people did not ride much. That was reorganized and for those bonds simple stock was issued, and gradually there is some riding now on that road, so that they are paying some small dividends. Now if that road, before the new securities could be issued, had to be valued by the Interstate Commerce Commission it might have said it was not worth anything. The Commission might have said it was not worth more than a

million dollars because it earned very little, and on that valuation the people who had bought these securities would practically not be able to get any securities on reorganization.

Now, the theory of it is that the thing that is to be provided against is for the future, in any new enterprise, any stocks and bonds being issued except for par, so far as the stock is concerned and the market value of the bonds; but so far as the company is in existence to-day, and bonds and stocks have been allowed to be issued, that the reorganizing company may never exceed the amount of stocks and bonds which at present exist, but it may on the reorganization issue bonds and stocks for that amount.

If something of that sort is not done, these poorer roads, these weaker roads, will fall into the hands of the stronger ones. The New York Central, the Pennsylvania Railroad, and the New York and New Haven—these roads are not bothered at all by any requirements that stocks and bonds shall not be issued for less than par.

Mr. RICHARDSON. Why is that?

Mr. BYRNE. The Pennsylvania Railroad can sell all the stock it wants for 125 or 130. It is not bothered by any act like this. It is the same with the New York Central or any other of the very strong roads. In Pennsylvania they have acts like this one, providing very stringently against the issue of stock for less than par. That, of course, makes it difficult for a rival road to be built in Pennsylvania. It makes it difficult.

Now, then, suppose that a road is built and it is not successful at first, and it goes into the hands of receivers, and it turns out that it can not pay any interest on the bonds. A lot of money has been spent on it, but it can not stand up against the older established roads. Now, unless the people who have bought those securities, those bonds, can get some sort of securities in a reorganized company, the great danger is that they will not come in in any plan of reorganization, and unless all the security holders do practically come in unanimously to those plans it is impracticable to carry out the plans successfully.

Suppose, for instance, there were \$10,000,000 of bonds on a road that had become insolvent and a reorganization committee called for a deposit of those bonds, and it says, "If we succeed in reorganizing this company we will give you for your bonds certain securities of the new company." Now, if those securities are too inadequate, if you say to the bondholder who has a thousand-dollar bond, "We will give you \$200 worth of stock in the new company," the tendency will be that he will say, "I will not be bothered with this. I will let the thing go to sale and somebody will pay something for it, and I will simply take my cash dividends on my bond."

In a case where I had actual experience there were \$600,000 first mortgage bonds in a street railway and \$1,200,000 second mortgage bonds. They were sold here in the East. After some years the street railway went into the hands of receivers. Every one said, "Why, there is no hope for this road. No one is going to ride over this road. Look at the bicycles!" The streets were filled with bicycles. The road did not pay its operating expenses. It was in the hands of the receivers. The way in which that road was reorganized was that the first mortgage bondholders took preferred stock, and the second mortgage bondholders took the common stock, only \$250,000 in all for \$1,200,000 of bonds, and then it only sold at 10.

There were parks built on the outskirts—people got sick of riding on the bicycles—and in ten years that road was making \$75,000, and that stock, the common stock, sold for two-fifty. Now, the people who got the two-fifty were speculators who went out there and bought that stock from the people who had held the bonds and who thought the thing was so bad there was no use doing anything. Now, this will enable those people, it will enable the new company, to have the securities not in excess of the old one. Now, if a man who had a thousand dollars' worth of second-mortgage bonds had been allowed to receive six or seven hundred dollars' worth of stock he would have hung onto it and he would have gotten something back for the money he originally put in it; but the men who really profited by that growth and the value of that common stock were the people who were wise enough to see what was going to happen and knew about it; they were professionals; they knew more about it than the investor.

MR. RICHARDSON. Do I understand you to say that you avoid one abuse or one fault by saying the company who brings about the consolidation shall never have any more bonds or issue any more bonds or stock than the company with which it is consolidated had at the time the consolidation took place?

MR. BYRNE. There is a clause which says it shall not interfere in any way with the issue of bonds and stocks under section 13. In other words, after the road is once reorganized and consolidated the right exists within itself to have the same rights and the same obligations as every other railroad. After the reorganization is once through and you have issued securities to the old holders of the former road, then it can issue no more stock except for par and no bonds except for the market value. It can do that.

MR. RICHARDSON. And go through the regular processes?

MR. BYRNE. Precisely.

MR. RICHARDSON. It does not hamper or limit the decline or progress of the road?

MR. BYRNE. No, sir.

THE CHAIRMAN. I take it that one reason why the proposition is made to legalize the issuance of stocks and bonds is for the purpose of affecting railway rates. Under your proposition you would practically legalize all the water that is now in any railway stocks.

MR. BYRNE. Not in my opinion, Mr. Chairman.

THE CHAIRMAN. If we authorize the issuance of stocks by congressional act up to a certain point, isn't that the declaration of Congress that the people who own those stocks are entitled to dividends upon them?

MR. BYRNE. I should not think so. I should say that the decisions as to rates are these, that the road is entitled to a fair return upon the value of its property, but that the amount of bonds and stocks which are on the property has ceased, under the decisions of the courts, to count at all on the question of what is a fair return. I refer to the Knoxville case, which is the very last one.

THE CHAIRMAN. We have not authorized the issuance of any stocks and bonds, but here is a proposition apparently based upon the principle of issuing stocks and bonds only to the amount of the value of the property, in one case for cash, but in another case for property in hand. Now, if we authorize the issuance of stock to the

amount that is now outstanding, a reissue of stock, isn't that a declaration by Congress practically that the value of the property is equivalent to the issuance of the stocks and bonds, and that those stocks are entitled to dividends?

Mr. BYRNE. I should think not. On the contrary, there is a statement that as to corporations organized in the future every share of stock will represent a hundred dollars.

The CHAIRMAN. Yes; but are not these corporations organized in the future?

Mr. BYRNE. But as to corporations that existed previous to January 1, 1910, and which were reorganized, that rule does not apply, and if—

The CHAIRMAN. The reorganized company is a new company and issues new stocks and bonds?

Mr. BYRNE. Yes.

The CHAIRMAN. Do you propose to have a difference in practice as to the value of stocks and bonds issued by a new company, a new company to purchase old railway property rather than a new company that purchases new railway property?

Mr. BYRNE. Yes.

The CHAIRMAN. Why should there be any distinction? If the property is not worth \$10,000,000 why should we permit the issuance of stocks and bonds to the amount of \$10,000,000?

Mr. BYRNE. I would give this as the first reason, that when any man in the future buys a share of stock or a bond of a railroad or goes into the reorganization of a railroad he is going in with this law in force; in the past people have bought these securities, which Congress did not in any way interfere with the issue of and which the laws of the States did not interfere with. People have bought those securities, and it frequently happens, not where there was any fraud on the part of the maker of those securities, but where there was a great business mistake; that mistake may be a mistake temporarily. In five years something which is a nonpaying venture now may be a very great paying venture.

The CHAIRMAN. Then that is the very question. Shall it be made a paying venture in the future at the expense of the people who furnish the money to pay railway rates?

Mr. BYRNE. No.

The CHAIRMAN. It can not be made a paying venture at anybody else's expense?

Mr. BYRNE. It can be made a paying venture by the development of the country; it can be made a paying venture by better management; it can be made a paying venture by the plans which the people who were originally building it had in mind being worked out to their full extent; it can be made a paying venture by getting in new money which goes into the reorganization.

The CHAIRMAN. It all comes out of the people who pay the rates?

Mr. BYRNE. Not as I view it.

The CHAIRMAN. Nobody else furnishes the money?

Mr. BYRNE. No. But at the rates which are being paid, which the community is willing to pay—and we would all say were fair to be paid—at those rates the venture may become a paying one in five or ten years, when before it was not.

The CHAIRMAN. That applies to the new company as much as to the old company, does it not?

Mr. BYRNE. Yes.

The CHAIRMAN. No difference in practice, as far as the growth of the country is concerned, between the old company and the new company?

Mr. BYRNE. Not much.

The CHAIRMAN. Now, if we propose to limit, as to future companies the basis of rate making on the value of the property, why should not we limit it as to all old companies?

Mr. BYRNE. I think we should. But I do not think, Mr. Chairman, that allowing these securities to be issued in any way affects or can be claimed to affect or to have any bearing on a discussion as to what rates should be.

The CHAIRMAN. Then why should we permit the issuance of more stocks and bonds than is the value of the property?

Mr. BYRNE. Well, because in the first place those stocks and bonds have been allowed to be issued.

The CHAIRMAN. They have been issued, but this is a reissue?

Mr. BYRNE. They have been allowed to be issued in the past. Now, if at some time in the future those securities may be of some value, without a raise of the price of rates, either passenger or freight, but by a growth of the community, which you would all say was perfectly proper, I think that that railroad should be allowed to issue them. Take the illustration which I have given from my own knowledge, that street railroad referred to, in that case the rates have not been increased—the rates have decreased—but at the particular time that it went into the hands of a receiver the railroad really had not been built, the plans of the builders had not been worked out, and apparently it was a complete failure. Now, within ten years it became the very opposite of a complete failure, and it became the opposite of a complete failure at the expense of no one; I mean the rates were lower than they were when it was a failure.

The CHAIRMAN. Take a railroad that has stocks and bonds of the sum of \$30,000,000; it turns out that the railroad is worth only \$15,000,000; there is a reorganization. The rates ought to be based upon the valuation of \$15,000,000, and yet your proposition, as I understand it, is to issue stocks and bonds—reissue stocks to the amount of \$30,000,000, with a view of maintaining rates so as to pay on the investment of \$30,000,000 instead of reducing rates to pay on the actual value of \$15,000,000.

Mr. BYRNE. No; that is not my idea. And I would say that that new corporation would have no right to say, "Because we have \$30,000,000 instead of \$15,000,000 the rates should be higher." The commission can value that railroad just as it can value another railroad and say that the rates which we are going to charge shall depend upon that value and not upon the amount of stock which has been issued.

The CHAIRMAN. Then, why should we issue more stocks and bonds than would be represented by the actual value of the road?

Mr. BYRNE. Let us take a case. Let us take some railroad which is running side by side with the New York Central or the Pennsylvania Railroad, and there are rates which are going to be allowed for the Pennsylvania Railroad or the New York Central which could not be cut down, and suppose—

The CHAIRMAN. I do not think you can imagine a case where the rates can not be cut down.

Mr. BYRNE. Let us suppose that those rates are going to be allowed; now, then, suppose on those rates which you do allow to the Pennsylvania Railroad or the New York Central, this weaker road is, in five years from now, able to make some earnings and able to pay dividends on the stock of this weaker road which, on reorganization, was issued for the bonds. Is there any reason why those people, whose money has been paid for these existing securities, should not be allowed to make that profit?

The CHAIRMAN. Here is a railroad company that issues, as I say, stock and bonds for \$30 000,000; it declines in the market until somebody buys it up for \$10,000,000—and that is quite a common practice—the actual value of the property is \$15,000,000; you propose to authorize the reissue of stocks and bonds to the amount of \$30,000,000, with a view of eventually paying interest on an investment of \$30,000,000, instead of reducing the rates if the business grows so there shall only be a return on the investment of \$15,000,000, which is the actual value.

Mr. BYRNE. I do not propose that any rate shall ever be kept up because there are \$30,000,000 of securities.

The CHAIRMAN. Then if there is no proposition to pay on the investment of \$30,000,000 why, if we are passing a law to fix stocks and bonds upon the basis of actual value, should we not retain it at \$15,000,000 so the investors will know that the stocks and bonds, after the passage of this act, have some correspondence with the actual value and not mere water?

Mr. BYRNE. I would say because the good that would come from a reduction is less than the injustice that will be done to the people who have actually bought these securities in the past. Mr. Chairman, what I want to bring out is this, that I think there will be very few of these cases; I think harm will be done to people who have put their money into these securities of these roads now existing which will hereafter be reorganized if you do not allow them to be capitalized in no greater sum than they are at present; I think that that harm will be much greater than the good that will come from making it absolutely universal in the future that every share of stock shall represent so much money; and I think this good will come to these people who have bought these securities in the past without in any way bringing harm to the community as a whole; I quite agree with you in saying that it should never be argued that because in these reorganized corporations thirty millions of securities have been allowed to be issued it should never be argued that that is a reason why a rate should be kept up.

The question of rates should be fixed independently of what the amount of capitalization is. But I do say this, that I can quite see that the reason why this piece of railroad property next year or the year after is valued very low may be because the plans which were in the minds of the builders have not had time to work out; they have not had the necessary money to work them out; rival and stronger roads may have deliberately hindered that weaker road from succeeding, and in the course of time, in five or ten years, by the weaker road getting its share of the business, which the stronger road now has, that weaker road, with the rates being increased, perhaps with the rates being reduced, will be able to make some return to those people who have bought those securities; that you will be doing fair-

ness to the people who have bought those securities and not harming any portion of the community.

Mr. ADAMSON. You do not think that capitalization by law would be an infallible basis for making rates at all?

Mr. BYRNE. No.

Mr. WASHBURN. May I ask you a question, Mr. Chairman, to illuminate not the discussion but my own mind on this subject? Under this bill a new road into which \$30,000,000 is put can issue \$30,000,000 of securities; now, that being true, why should not the old road into which \$30,000,000 has been originally put, which, for one reason or another, needs to be reorganized, be permitted to issue new securities up to the amount of the contribution which was originally made, because the new road may be subject to just the same vicissitudes, you know. Why should not the same rule be applied as to the old road?

The CHAIRMAN. I do not think we had better enter into any discussion along that line.

Mr. WASHBURN. I was trying to get information from an expert.

Mr. TOWNSEND. I think that question is not complete enough; I am interested in your inquiry, but that \$30,000,000 in the first place may not have been issued for 100 cents on the dollar.

Mr. WASHBURN. I am assuming it has been.

The CHAIRMAN. We know it is never done.

Mr. WASHBURN. I am assuming it has been done.

Mr. TOWNSEND. Of course, if it has been——

The CHAIRMAN. Isn't it a fair assumption that, as a general thing, the railroads in the United States, the new railroads, have not issued stock for par?

Mr. BYRNE. Oh, I think if you are going to fix it by the actual value in cash for the property which was received for the stock, the actual value in cash of that property has not been equal to the par value of the securities in the past.

The CHAIRMAN. It has been quite the common thing to give the people the stock who purchase the bonds?

Mr. BYRNE. To give some stock?

Mr. ADAMSON. In connection with your question about the new road, I want to ask the gentleman a question. He seems to be a man of broad observation. These restrictions, in your observation, do they not work more detrimentally upon new enterprises than they do upon old?

Mr. BYRNE. Well, as I said to Judge Richardson, I would rather not express an opinion that would in any measure depart from the general principles of this bill.

Mr. ADAMSON. I am not speaking of that; I mean the practical effect of this restriction as to the issuing of stocks and bonds; wouldn't that operate more to retard and discourage new enterprises than hurt existing ones?

Mr. BYRNE. I think so; I should think so; but I would rather not express opinions on such fundamental questions as that. What I did want to do was to call attention to this fact, that we would have reorganizations, and that it would be very harsh and severe on people who had taken these securities which the various States allow to be issued if they could have nothing to represent them; and if we allow them to have something to represent those securities they now have

it would not interfere with the rights of the commission or affect rates. I think the right thing is intended as to the amount of the capitalization, and so securities could be worth something in the course of time, not at the expense of the community, but at the expense of some stronger rival road, if the weaker one gets its share of the business.

The CHAIRMAN. You speak of the stronger rival road. Take this case: Here is a road alongside of the stronger road; there is competition between the weaker road and the stronger road?

Mr. BYRNE. Yes.

The CHAIRMAN. The stronger road uses its influence—which is often considerable—to keep the traffic from the weaker road, or, perhaps, it has reduced its rate so the weaker road has business taken away from it. In the course of time and by reason of operations in the market the stock of the weaker road is largely taken away from the people who made the investment, and as it goes down the stronger road, or somebody in connection with it, obtains possession of the stock; then it is reorganized, and the total amount of stock again reissued. Do you believe we ought to authorize that reissue and enable them to pay interest on the total value of that stock and bonds for the benefit of these people in control of the stronger road who have deliberately ruined a weaker road in order to get possession of it?

Mr. BYRNE. No. Now, in the first place, of course, I always stick to my belief that the rates are not to be influenced by the amount of the bonds and stock of any road. But, Mr. Chairman, the second thing you suggest is not a thing that has come into my experience; the thing that has come into my experience is that the people who originally get those securities retain them to the end unless there are too many difficulties thrown in their way, and that when there is any reorganization the people who go into the reorganization and get the securities of the new company are the people who are bona fide investors and not people who bought those in the interest of the rival road. Now, I have in my mind several cases just at present. The only danger of the rival road is that the holders of the securities—the only danger of a rival and stronger road getting possession of these roads, will be that the holders of the securities, who are investors, will have so many difficulties placed in their way in reorganizing that they will give it up, and then some stronger railroad or some strong interest connected with the railroad will buy that property for less than it is worth. In such a situation I find the real danger and difficulty.

The CHAIRMAN. If the stronger road buys it for less than it is worth and can only charge rates based on the price it pays for it, isn't that to the interest of the public?

Mr. BYRNE. No; I wouldn't say to the interest of the public.

The CHAIRMAN. The interest of the shipping public?

Mr. BYRNE. I know, but I do not think we care solely about the interest of the shipping public, if it were going to do injustice to people who had really invested their money; and, furthermore, it has been the theory of all our laws that the interests of the shipping public were best served by having something like competition. I do not think the purchase of a competing road or a road that might become a competing one for a few more dollars less than the investors in that

road could have got it at is a good thing for the community; I think it would be better to let the people who originally put their money into it and bought the securities, let them reorganize that road and build it up as a competitor for the existing strong road; that would be my idea of what would be the best thing for the community.

MR. TOWNSEND. What is the custom at present?

MR. BYRNE. The method in which the reorganization takes place?

MR. TOWNSEND. Yes; are these men protected, these investors—these original investors—are they protected under existing conditions?

MR. BYRNE. Oh, yes. What they do is this, they come together, they put their securities into the hands of some one representing them, and then they are in the position—

MR. TOWNSEND. While you are discussing it, the reason for my asking that question is that I understood you, in connection with that electric road somewhere out West, to say that those stockholders were defeated in their rights.

MR. BYRNE. They were; but no one was trying to do it; we were doing what we called reorganizing conservatively; we thought we were doing a very sensible and wise thing. We started to reorganize that street railroad on the theory that we would have no more securities than the property was actually worth; we would have no fixed charges; we had the first-mortgage bonds to take preferred stock in the new company, dollar for dollar, and the second-mortgage bonds given 25 per cent in common stock for their bonds, and we thought that that method of reorganizing was up to the very soundest, conservative standards.

As I say, what happened was, it appeared, that what kept that road in such bad condition financially, so far as its earnings were concerned, was a purely temporary difficulty. It was bad management, the road was capable of earning enough to pay interest on the bonds that had been originally issued. So if we had reorganized it in that way, given the second mortgage bondholders stock at par for their bonds, or at 75, they would have said, "We have got a substantial thing," and they would have held onto it. But we thought that that was unwise; we thought a conservative action required that we should only give stock to the amount of the property. Well, now, it turned out that the people who got that small amount of stock said, "Oh, well, there is no use hanging onto this," and someone came around and offered them 10 or 15 and they took it; that was because they got discouraged. But what I wanted to bring out was that there was a property which, within less than seven or eight years, earned money on the original securities and earned it at no one's expense. I mean the fare was 5 cents; they built extensions and gave the people a longer ride for 5 cents; they sold 6 tickets for a quarter; they did not put on excessive rates; they never asked any favors on that account, and anyone would have said, "you have a perfect right to charge 5 cents for that road."

MR. ADAMSON. They accommodated the people and profited by it?

MR. BYRNE. Yes, sir; and we did not attain success by putting on increased rates.

MR. KENNEDY. I can not understand what difficulty there would be in reorganizing a road if the commission were given discretion to limit the amount of stock that should be issued. That is, suppose

the road was overcapitalized in the first instance, and that is one of the things that makes a road weak.

Mr. BYRNE. Yes.

Mr. KENNEDY. Too much stock.

Mr. BYRNE. Yes.

Mr. KENNEDY. And an opportunity comes to get a lot of the water out, why should they not be permitted to issue—or rather, the question I wanted to ask is, Why should they not be reorganized as well, provided the commission, in their discretion, should say that one-half of the stock should be issued?

Mr. BYRNE. You mean that the commission should not be bound to see that no more stock is issued than the actual value, but they should be given some discretion? Well, I will tell you what it seems to me about that. It seems to me that the commission might not want that responsibility. They might feel that if in any particular case they allowed the amount of the stock to be issued in excess of the stock which they thought represented the fair value, that there might be an outcry against them that they were authorizing watered stock.

Mr. ADAMSON. The only business that we can have with this question at all, by any stretch of authority or construction, is to enable us, by having a knowledge of the capitalization or earnings, to help fix rates; that is the basis on which we have this discretion.

Mr. BYRNE. Yes.

Mr. ADAMSON. If we get that information—if it is material, and we get that information—isn't that all the business we have with these roads?

Mr. BYRNE. Well, I think so far as fixing rates goes, that it is in the power of the commission and power of Congress to provide that there shall be a valuation of the property, and they get that information, and the question of what the capitalization is, is not given any weight by the court.

Mr. ADAMSON. Now, we may take steps to acquire knowledge as to the capitalization, if we want it, as to the earnings, if we want it, and as to any other feature connected with the existence and operation, if we want it; but isn't that sufficient for our purposes, to enable us to apply that knowledge to the rates, without going further and trying to fix every right and detail of all of these local corporations?

Mr. BYRNE. I should think so. In Virginia, you know, the law there, and the law in accordance with the constitution, is that anything that the people shall agree upon shall be full payment for capital stock, I mean, if you agree that you shall pay \$10 for a \$100 share of stock; but if there is to be any property issued there has to be a statement filed with the corporation commission showing the value of that property. They are proceeding on the theory that no one really does view the amount of the capital as representative of the value, but that there should be some statement somewhere, an official statement, of what the value of the property is.

Mr. ADAMSON. That is information for the benefit of the public, and not demanding the power to control, prohibit, or order?

Mr. BYRNE. Yes; that is the information there.

Mr. RICHARDSON. Now, if I comprehend your views, they relate to reorganization and consolidation of existing lines?

Mr. BYRNE. Yes; the consolidation would apply generally to all lines, the reorganization only to those existing.

Mr. RICHARDSON. But the trouble in my mind—I appreciate your indisposition to express an opinion about a policy—but it seems to me, so far as I can understand it, that you leave out of consideration new and independent lines that are to be organized. Some one, I think Mr. Hill, has said that it will take five billions of money to put the railroads in this country in such condition as would meet the demands of transportation at this time. Well, now, that contemplates certainly the organization of independent lines and new railroad companies, and according to my own views, if I were asked this morning to vote for a blanket rate bill applicable to all railroads in this country, I would not do it, because the conditions are entirely different.

You might take a road out in the West where it would require, instead of 2 cents a mile, a rate of 7 or 8 cents a mile to keep it up, to keep it out of bankruptcy. So it is with these new and independent lines that I am talking about. When they organize you put them exactly under the same conditions and apply to them the same demands that you do to the old roads organized and running, and have been running successfully, and possibly some calamity overtakes it and you put that new road into exactly the same position as the old. Therefore, in my opinion, you are not encouraging at all the development of new enterprises. It seems to me there ought to be a reasonable rule prescribed applicable to new enterprises different from that applied to old ones. You would not favor a blanket railroad rate for this country, say a 2-cent rate applicable to all. However, that is another question of policy which I will not ask you, but I do think that for these new enterprises that certainly will come up in this country there ought to be a different rule applicable to organizing and getting out their capital stock, arranging their rates, and so forth, than is applied to a road that consolidates or reorganizes; it seems to me it ought to be different.

Mr. BYRNE. Well, I suppose those are matters that will have to be considered in connection with the whole policy of a bill requiring that a share of stock shall represent \$100 whether it is a new company or an old company. That is purely a question of policy that is presented, and the question about reorganization of existing roads, it seems to me, is something more than a question of policy. It seems to me a question of fairness and justice to the people who have bought securities which all the States in the nation allow to be issued; that if we start in on a new policy, and provide for the future, whether it is a good policy or a bad one, there is no injustice to any man who builds a railroad or buys a share of stock, but there might be a very strong feeling of injustice conceived on the part of some one who had bought securities, which were allowed to be issued, who not only finds he does not get any interest on his bonds now, but that he is prevented from ever having anything that will represent anything in the future.

Mr. KENNEDY. Suppose, now, that a railroad is to be reorganized under the conditions you describe, that it has outstanding bonds and stocks in double the amount of the real value of its property; wouldn't those bondholders and stockholders—and perhaps the bondholders would be on a different basis—wouldn't they be willing to reorganize and get one-half of the stock, one-half as much par for their stock that is half water? And that reorganization could be made on that basis, provided the Interstate Commerce Commission had fixed the

basis, and then stockholders could not say that the railroad company was trying to squeeze them out.

Mr. BYRNE. Well, now, about that——

Mr. KENNEDY. It looks to me that we could get that stock back to the same basis as other stocks hereafter to be issued without incurring any trouble with the stockholders, the stockholders saying that they were being squeezed out.

Mr. BYRNE. Now, here are some of the things that have to be done in a reorganization: Usually, a very considerable amount of money, new money, has to be raised; receivers' certificates are issued to put the road in much better condition and get equipment and everything of that sort; when the road is reorganized that money has to be furnished by some one. In England it could be furnished in this way: If three-fourths of the security holders agree that an assessment of 25 per cent on the stockholders is the right sort of thing, the court would say that every stockholder must pay it or lose his stock; but in this country we have no such law; there is no way of compelling any stockholder or bondholder to do something because the court thinks it is good for him; it is purely voluntary. Now, then, suppose three-fourths of the stockholders are willing to reorganize on the theory that this 25 per cent should be paid in by the stockholders, but the other 25 per cent do not agree, some of the bondholders do not agree, and then, when the foreclosure sale takes place, the reorganization committee, acting for the majority of the people who do agree, for the people who do agree have to raise enough money to pay the dividends on the purchase price to the bondholders who do not come in.

You see I mean, suppose there were fifteen millions of bonds and five millions of them stayed out and the property sold for \$10,000,000, then you have got to raise \$3,333,000 for those bondholders who did not come into the reorganization. You have got to raise that money—that is, the new money to pay for the receivers' certificate—and you have got to get some new money to put into the treasury of the company. Now, it is highly desirable that the company should get that new money, but it won't get it when we have no law to compel people to accept the plan they do not approve of. There is no way of working it out; we can not explain to all the people who hold bonds and stocks in the railroad how difficult this procedure is. I have seen men, in the very best of faith, desire to make as conservative a reorganization as possible, fail to have the assistance of those who held securities, because the reorganization was too drastic. There are plenty of people who say what you do, "We would rather have fifteen millions of securities representing property than twenty-five millions merely representing hope."

Mr. ADAMSON. If you sell the stock and it is paid for at par the certificates are issued and your road is doing business without any pretense of fraud or concealment as to its business, do you think there is any power on earth that has the right to limit the corporation as to the amount of credit it shall have in the commercial world or the amount of bonds that can be sold to the public, or to whoever will take them?

Mr. BYRNE. Do you mean to refer to the question of some of these provisions about issuing bonds?

Mr. ADAMSON. I am not speaking about these provisions; I am not committed to a single one of them. Here are two propositions: First, to limit and control the methods and amount of the issuance of stock and then the method and amount of the issuance of bonds. Now I go to the fundamental proposition; I admit every man that holds a certificate of stock ought to have paid every dollar into the corporation for it. Now, you make no concealment about what your concern is worth or what business it is doing, ought there to be any limitation as to your right to get all the credit you can in the world if you want to sell the bonds for any purpose?

Mr. BYRNE. Well, I will have to, Congressman, try to stick to the line I have set out for myself of not giving an opinion on the question of policy or legal rights, but simply try to bring a situation clearly before the committee and to express here that I think that the people in that situation can be dealt with in a way that will not make them feel that there is injustice and without doing injustice to the community as a whole and without tying the hands of the commission or Congress on any question of rates.

Mr. ADAMSON. I am perfectly aware that I am old fashioned, but I am not asking any question that the Supreme Court will not stagger somebody with when they appear before it.

Mr. BYRNE. I think there will be many questions.

Mr. ADAMSON. And the other question is as to whether Congress has any power to meddle with the local details of these corporations beyond the necessary information required for making rates?

Mr. BYRNE. I trust that my reason for preferring not to answer—that I made it clear that I would rather not get into what might be considered a controversial question as to the legal standing.

Mr. ADAMSON. You do not want to preach a doctrinal sermon?

Mr. BYRNE. That is it.

The CHAIRMAN. How much longer do you desire, Mr. Byrne?

Mr. BYRNE. I am aware that I have trespassed a great deal on the kindness of the committee.

The CHAIRMAN. Not at all; I only asked you that in order to determine whether we should take recess at this time.

Mr. BYRNE. Well, this act has not been read in full.

Mr. TOWNSEND. No.

Mr. BYRNE. But I have not discussed the matter of consolidation; that when there shall be a consolidation of the two companies the consolidated companies shall not be allowed to issue any securities in excess of those of the two constituent companies. So far as I am concerned, I do not think it would take me much longer. What I might say would probably be a repetition of what, perhaps, I have repeated too often.

The CHAIRMAN. I did not know but that there was another subject you wished to discuss.

Mr. STEVENS. I think there is another subject on which we should have some information, and that is how this law will work, as it may come in conflict with the laws of the different States relating to similar subjects. What will be the practical effect of this law and state laws in working out these various details?

Mr. PETERS. You mentioned the consolidation a moment ago; will you tell us something about consolidation where the stock of the

purchasing company was selling above par and the stock of the selling company was selling below par?

Mr. BYRNE. That is covered by this—that the consolidated company might have more stock than the constituent companies, provided the Interstate Commerce Commission filed a statement that the value of the property is equal to the value of the amount of stock of the consolidated company. Suppose one company had ten millions of stock, another five millions of stock, and the Interstate Commerce Commission said the value of the property was twenty millions of dollars; then it, the consolidated company, might issue twenty millions of stock; but the case I had in mind was of two companies, where the stock of the two companies, one running from there to there and another from there to there [indicating], might be selling at the same price and below par.

Mr. PETERS. Take the two separate companies. Suppose there was an impairment of the capital stock of the selling company, but there were sufficient assets of the purchasing company to make up for that, would you allow the consolidated company to issue certificates to the amount of the value of the total assets?

Mr. BYRNE. You mean even though it would make more stock than the two companies before had? I would allow the consolidated company to issue as much stock as the two constituent companies had in any case.

Mr. PETERS. Even if there was an impairment of the selling company?

Mr. BYRNE. Yes; because that would not increase the total stock of the railroads outstanding; and it would tend to hinder consolidation unless you did allow it, and consolidation is a desirable thing if it makes a through line instead of two or three links. Now, as to the question regarding the state laws and the United States laws.

Mr. STEVENS. How this would work where there are different laws in the States along these lines. I presume these companies would have to conform to both sets of laws?

The CHAIRMAN. Take the New York law and this law.

Mr. BYRNE. I assume they would have to conform to both. In other words, if there were a law, for instance, as in the State of Pennsylvania, that no railroad shall issue stock for less than par, with an affidavit from the president and chief engineer that the money value of any property which is to be taken for the stock shall equal the par value of the stock, we would have to conform to that law, as well as to any provision of this law and the public service law, in New York.

Mr. TOWNSEND. Might there not be a conflict in this case? Provided, for instance, that a bond issue of a railroad may be sold at less than the par value, provided the commission finds that the carrier could not dispose of it at par, and suppose that the State of New York provides under its law that no bonds shall be issued at less than par and the commission, after hearing, determines that that stock can be sold at 75 cents, or that bond, how would that be overcome—that conflict? Suppose it was a New York organization, for instance, or corporation.

Mr. BYRNE. Well, I construe this act to be prohibitive rather than an act which authorizes. In other words, that this act states that no bonds shall be sold for less than their market value as fixed by the commission; that it does not say that a railroad corporation may

sell such bonds, but merely says they should not be sold unless that condition should be complied with, and consequently, if there was some more stringent provision in the State, the bonds could not be sold unless they complied with that more stringent provision as well as with this clause in this act. That was the impression I got from the act.

The CHAIRMAN. You take the public utilities commission in New York. A company might be required to apply to that commission and also to the Interstate Commerce Commission before it received authority, the Interstate Commerce Commission and the National Government not giving authorization—

Mr. BYRNE. Yes.

The CHAIRMAN (continuing). But permission, as far as it is concerned, and the other giving authorization?

Mr. BYRNE. Yes; that is my understanding of the meaning of the act; I have not studied it particularly, with that in view.

The CHAIRMAN. They would be required to appeal to both?

Mr. BYRNE. Yes; that would be my impression; I have not particularly read the act with a view to passing on such questions.

Mr. RICHARDSON. In other words, I understand you to say that you look upon this act as being prohibitive in that respect?

Mr. BYRNE. Yes; that nothing should be done, that no bonds or stocks should be issued unless certain requirements were complied with, and I should rather think that it meant nothing more than that.

The CHAIRMAN. Suppose a railroad company should be organized in the State of New York to construct a line of railroad wholly within the limits of the State of New York—a new road—what would the National Government have to do with it? Is there any way by which it could be brought under the provisions of this act?

Mr. STEVENS. The State of Texas, for example?

The CHAIRMAN. And as a rule companies are organized to build roads wholly within the limits of a State?

Mr. BYRNE. I have not considered that fully, Mr. Chairman. I understand, of course, that the theory upon which this act rests is that it is a regulation of interstate commerce and its instruments, and I understand also that there are plenty of decisions, so far as rates go, and other matters of that sort, that are purely intrastate matters with which Congress has no power to interfere.

Mr. STEVENS. Right there; there are decisions, one delivered about a year ago in the circuit court of appeals, holding that a road entirely within the State of Colorado was covered by the terms of our safety-appliances act, for example.

Mr. BYRNE. Yes.

Mr. STEVENS. Now, a road like that, entirely within a State, might be governed by part of our interstate-commerce laws and regulations, but not by other parts?

Mr. BYRNE. Yes.

Mr. STEVENS. Now, what could you say as to the application of this act?

Mr. BYRNE. I was just going on to say that there are decisions which say that notwithstanding a road is a purely intrastate road its relation to some particular shipment may be such that it is then doing an interstate business and subject to the various congressional regulations. Now, just whether in the case of a road which is purely

intrastate, a new road to be built, and which has not done any business, whether there is any way in which these regulations, as to issuing of securities, can affect that, I have not considered.

The CHAIRMAN. You very easily see that a road in existence may be wholly within a State and yet is doing an interstate commerce business, and if it be not doing that business, we have the power, I take it, to compel it to do an interstate commerce business by making a through route, but here is a new road that can not do interstate business because it is not constructed?

Mr. BYRNE. Yes.

The CHAIRMAN. Then, as you say, it is a perfectly clear distinction, between the road about to be built and the one which is already built and doing every day interstate commerce business, even though both roads would be within the limits of one State.

Mr. RICHARDSON. Suppose this would occur: A road never becomes interstate until it crosses from one state line to another, and before it crosses that state line, before the Federal Government, through the Interstate Commerce Commission, under the act of Congress, would have any authority over it, it complies with all the laws of the State, it issues its capital stock and its bonds and then when it crosses the state line it becomes subject to interstate commerce law?

Mr. BYRNE. Yes, sir.

Mr. RICHARDSON. What do you suppose would be the result of that?

Mr. BYRNE. You mean where it has already issued its securities before it became subject to the interstate-commerce law?

Mr. RICHARDSON. Yes; and has not complied with this law at all, this prohibitive law, as you call it, because it is operating wholly inside of a State.

Mr. BYRNE. Well, I think practically the question is, Is there any language which would make this act broader than it is at present, so as to include a road that is purely intrastate? It seems to me that there is no such language; the language of this act is as broad as it can be possibly made. If both of those cases can not be brought within this act, it is because it is intrinsically impossible to bring them.

Mr. RICHARDSON. The State controls it as long as it does business within the limits of the State?

Mr. BYRNE. Yes.

Mr. KENNEDY. When a railroad company takes out a charter in New York State or any State it declares what it intends to do; it intends to build a railway?

Mr. BYRNE. Yes.

Mr. KENNEDY. And that mere declaration makes it clear that when completed it will be an instrument of interstate commerce?

Mr. BYRNE. Yes.

Mr. KENNEDY. Available for that purpose?

Mr. BYRNE. But it is pretty narrow language. In New York, as a matter of fact, you state what the termini of your road are, how long your charter is to be, what your capital stock is to be, and that it is for the purpose of building, constructing, and operating a railroad. I have spoken of the reorganization and consolidation. Then there is one other case in this amended act, and that is one railroad buying another.

Mr. TOWNSEND. Merging?

MR. BYRNE. Yes. Now, for instance, suppose a railroad to-day is running through Virginia, North Carolina, and South Carolina, and it is to be foreclosed. There is a reorganization; the road is bought by some one in behalf of the security holders; then he has to sell the part that is in South Carolina to a South Carolina corporation, the part in North Carolina to a North Carolina corporation, and the part in Virginia to a Virginia corporation and take securities from each of those three railroad corporations; then he has to go to work and get his railroad together; usually it is done by consolidating; he will have his South Carolina, North Carolina, and Virginia corporations consolidated under some statute which will be in each of the three States, and it will be finally that consolidated corporation that will issue the securities, issue the stock and the bonds to the holders of stock and bonds of the old insolvent corporation. But in some States there is no law authorizing consolidation. In Illinois, for instance, there was a decision made, after some twenty years of consolidation of railroads, that there was no law of the State which authorized a corporation of that State to consolidate with a corporation of an adjoining State. I remember reading that decision some fifteen years or so ago, and it was held that the mortgage issued by the consolidated road was void.

Now, there are laws which allow this; the law of Indiana provides that a reorganized railroad may acquire the bonds and stocks of a railroad in an adjoining State; the laws of Illinois providing that if the stock and bonds of one of its corporations are owned by a corporation of an adjoining State, then that corporation may acquire the physical property; in other words, the method by which one proceeds, in the case of a railroad that runs through several States, to put the property on its feet after it has once gotten into the hands of a receiver depends very much upon the local laws. And this provision is to cover such a case as the last one that I have supposed; that is, to the effect that a corporation may acquire the stock of another corporation, stock and bonds, provided either the stock of the purchasing corporation and the bonds issued to buy the bonds and stock of the purchased corporation are no greater than the fair value, as found by the commission, of those bonds and stocks, or if no greater in amount than the amount of those bonds and stocks. That is on the same general scheme as the provision for reorganization and consolidation.

MR. TOWNSEND. Wouldn't that double up your stock?

MR. BYRNE. No; then I think there should be added here some provision that that stock so purchased should not be sold, because it is merely to cover that technicality, to bring you within those state laws.

MR. KENNEDY. If the stocks and bonds issued to buy that stock are to bear dividends on the road that issues them, the stock that is purchased is to pay dividends, you have got a double amount of stock outstanding?

MR. BYRNE. It should be provided that those so purchased should not be sold again. I mean that a railroad might buy bonds and stocks but should not be allowed to sell the bonds and stocks it has purchased.

MR. KENNEDY. Let the dividends paid on the stocks purchased pay the dividends on the others?

Mr. BYRNE. That is it.

The CHAIRMAN. Is there any other proposition?

Mr. BYRNE. That is all.

The CHAIRMAN. Let me make this suggestion: You have been interrupted, very properly, by questions, and you had some papers prepared there. Would it be convenient for you to submit your propositions to the committee as one piece by Monday morning, so that they can be printed?

Mr. BYRNE. I would be very glad to do that; I haven't anything here; as a matter of fact, I have nothing in writing; I have not prepared any statement of any kind; I should have to prepare it, but would be very glad to do it.

The CHAIRMAN. This is a matter that has never as yet been discussed before the committee to any extent, and I would suggest, if you are willing to do it, that you prepare an argument, so that we will have, in addition to your statement made here to-day, together with the interruptions, a consecutive argument that will be more convenient to refer to.

Mr. BYRNE. I shall be very glad to do that. Would Tuesday be early enough?

The CHAIRMAN. We will send this record to be printed Monday morning and such a statement could be added at the same time; it would be more convenient if you could have it for us by that time; of course, if you can not have it until Tuesday we will print it with Monday's hearings.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,

Washington, D. C., Monday, February 7, 1910.

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. We are now ready to hear the bankers.

STATEMENT OF MR. G. W. NEVILLE, OF NEW YORK, CHAIRMAN OF THE COTTON EXCHANGE COMMITTEE ON BILLS OF LADING, CHAIRMAN OF THE JOINT COMMITTEE OF THE NEW YORK TRADE ORGANIZATIONS, AND OF THE BILLS OF LADING COMMITTEE OF THE NATIONAL TRAFFIC LEAGUE.

Mr. NEVILLE. Mr. Chairman and gentlemen, we had a meeting of the attorneys of the Eastern railroads and the grand trunk lines, and Mr. McCain, the chairman of that committee, was present, and we went over the bill of lading bill as introduced by Mr. Stevens, and we agreed to some changes in the law.

The CHAIRMAN. You refer to House bill 17267?

Mr. NEVILLE. Yes, sir; and the changes have been left with Mr. Stevens, and he was to have been here by this time.

The CHAIRMAN. Mr. Stevens is here.

Mr. NEVILLE. I beg your pardon. Judge Farnham, of the New York and New Haven road, representing the Eastern attorneys, will make that same statement. So far as I am concerned, if you gentlemen are satisfied with the testimony and statements laid before you in the former hearing before this committee at the last session of Congress, we have nothing more to say as to the agreement between ourselves and the representatives of the Eastern roads.

The CHAIRMAN. I think you had better state what you have to say before the committee now.

Mr. NEVILLE. Very well, sir; just as you prefer.

Gentlemen, all we ask to be done in this bill is to have the railroads made responsible for the quantity of commodities mentioned in their bills of lading on which drafts are paid. The losses that happen in those transactions in proportion to the total amount of commerce is small, and if they were distributed they would not amount to a great deal. But when the losses do occur, they fall upon one individual shipper or consignee or one individual banker or bank. The bankers are not interested in this question until all the capital of the merchants is exhausted. The merchants use the bill of lading as collateral against a loan, and consequently when the goods do not show

up the bankers do not stand to lose a cent until the merchant's capital is gone. It is for this reason that the merchants are interested in this bill and seek this legislation.

I thought until three years ago that the railroads were responsible for bills of lading signed by their agents, but I suddenly realized that they were not when I came face to face with a prospective loss of \$79,000 on a shipment of cotton.

The incident was this: We had been buying cotton at a place called Belton, Tex., for a number of years from the same local buyer. The cotton was being signed for by an agent in the employ of the Gulf, Colorado and Santa Fe Railroad under the same conditions that he had signed bills of lading for five years previously. In 1906, beginning about October 11, and extending to about December 12, he had signed bills of lading for cotton representing a value of \$79,000. On the evening of the 24th of December we were notified by the agent of the Gulf, Colorado and Santa Fe Railroad that there would be no cotton delivered on those bills of lading because the cotton had been taken off the platform by the banks of Belton. We had started tracers for this cotton in the usual course of business, and on about the 28th of December we received a letter from the transportation department of the Gulf, Colorado and Santa Fe Railroad, advising us that the bills of lading that we had started tracers for had been noted, and advising us that all that cotton was on that platform at Belton, Tex., and would be moved as soon as they could get cars to move it. That letter fortunately relieved us from the necessity of going into court, and the Gulf, Colorado and Santa Fe Railroad paid us that money on the basis of that letter.

The feature of special importance in connection with the commerce of this country has never been touched upon by Congress in the legislation affecting railroads, namely, the bill of lading that carries the goods. By far the majority of the commerce of this country is handled on bills of lading, and the people who move the crops never see a pound of the goods. It is done on the confidence that lies in the bill of lading. We therefore ask this legislation—

The CHAIRMAN. Let me ask you. In section 4 of the bill is the provision that carriers shall not issue a bill of lading before the whole of the property as described therein shall have been actually received and is at the time under the actual control of the carrier. What do you understand that that is intended to mean?

Mr. NEVILLE. Well, if I were to take my own particular line of goods, the line of business I am in myself, I would say that there are various grades of cotton, and the bill of lading never states the quality at all. It will say merely "100 bales of cotton marked 'H. A. M.,' " for instance.

The CHAIRMAN. Suppose you should ask the railroad company to state the quality in the bill of lading. Then what?

Mr. NEVILLE. They would not do it. They would not be required to do it.

The CHAIRMAN. I am not so sure about that. We have now provided for official standards by the Government as to cotton. There is a grade shipment in that cotton. When you ask a railroad to give you a bill of lading and you describe the highest grade of cotton, would they not be obliged to do it?

Mr. NEVILLE. No, sir. I can not conceive of a road that would do it.

Mr. BARTLETT. It would be in effect, under this section of this bill, an estoppel when a railroad company, if it issued this bill of lading before it got the description of the goods—an estoppel of a denial on their part that it had received the goods, and the railroad would be compelled to pay for them as if they had received them under this bill. Then in court to recover damages the only question would be the value or the quality of the cotton that you would attempt to secure recovery of—good, middling, or fair, as the case might be.

Mr. NEVILLE. You mean on the basis of the bill of lading attached to the draft?

Mr. BARTLETT. It would be so much for the particular grade—fair, or middling, or good—that the price of the cotton would be fixed by the court?

Mr. NEVILLE. Yes, sir.

Mr. BARTLETT. Then you propose to make the railroad liable, and to estop the denial of liability by giving the bill of lading, and when you say you will not expect the railroad to state the quality, you mean—

Mr. NEVILLE. Not if they receive the goods before they sign for them.

The CHAIRMAN. Suppose they do not deliver the goods. Then what is the basis of the value of the goods?

Mr. NEVILLE. Then the burden of proof will be upon us to show what the quality of that cotton was.

The CHAIRMAN. So that it would be impossible for the railroad company to know what the value of the goods is.

Mr. NEVILLE. Only in case of a loss or a failure to deliver, and then the burden of proof is on us.

The CHAIRMAN. It is impossible when a railroad accepts goods to know what the value is?

Mr. NEVILLE. Yes; it is impossible.

Mr. RICHARDSON. Is it not a fact that the necessity for this bill of lading from a commercial standpoint is to obviate the trouble and difficulty that often occurs of a railroad agent issuing a bill of lading for an amount of property that is not delivered to him at all? Is not that the purpose of it?

Mr. NEVILLE. Yes, sir.

Mr. RICHARDSON. You are trying to correct dishonesty in the interior of railroad offices?

Mr. NEVILLE. No, sir; we are trying to protect the bills of lading that are put in circulation to move commerce; to make them what they purport to be.

Mr. RICHARDSON. But the real evil that your bill strikes at is dishonesty on the part of the railroad agent. It is intended to obviate and get rid of that imposition that is put upon banks and other institutions by a dishonest railroad agent issuing bills of lading for an amount of property that did not come into his hands, and therefore the bank paying that bill of lading is caught by it to that extent?

Mr. NEVILLE. Judge, I am not speaking of the banks. I am speaking of the merchants. This bill, as I construe it, is more to protect

the merchants than the banks. The bank does not lose a cent until after it has gone through the merchant.

Mr. RICHARDSON. This bill is to meet liability of dishonesty on the part of an inferior railroad agent who issues a bill of lading that is not true and which binds the railroad. That is what you want to secure?

Mr. NEVILLE. Yes; and I want to secure it in a way to create the least disturbance.

Mr. RICHARDSON. Don't you think it ought to be cured by having honest agents as common carriers, to put honest men there who will tell the truth, and who will not issue false bills of lading?

Mr. NEVILLE. When you make the railroad responsible, Judge, it seems to me that will cure it. With this law in effect, I never expect to see another fraudulent bill of lading.

Mr. RICHARDSON. But I would rather go after it in a shorter and more feasible way, and make the railroad responsible in the first place. In the first instance the roads should have honest men there, with whom the public could deal. I do not see why this demand is made for this sanctity to be given to bills of lading.

Mr. NEVILLE. The merchants who handle these goods never see a pound of the goods.

Mr. RICHARDSON. This kind of legislation is to give the same commercial character of sanctity to bills of lading that is given to negotiable commercial paper?

Mr. NEVILLE. Not altogether, Judge. I am not a lawyer, but I should think that this proposed law is not as strong as the law you have got in the State of Alabama on the same subject.

Mr. RICHARDSON. That is no answer to it. I am not responsible, and am not supposed to stand responsible for the law of Alabama any more than for this.

Mr. BARTLETT. You speak in section 4 of not permitting the railroads to give a receipt until after the property is received. You are familiar with the shipment of cotton, are you not?

Mr. NEVILLE. Yes, sir.

Mr. BARTLETT. Now a man that had 1,000 bales of cotton to ship probably could not deliver it all in one day. I happen to live in a cotton town, where a large number of bales of cotton are handled each day by the warehousemen and the draymen. You say you are not a lawyer?

Mr. NEVILLE. I am not; no, sir.

Mr. BARTLETT. It would seem that you seek to compel the party to deliver this all at once. In that case, who becomes responsible? Suppose the shipper should deliver 100 bales at a time?

Mr. NEVILLE. He could take a bill of lading for 100 bales.

Mr. BARTLETT. But that is not all of that shipment?

Mr. NEVILLE. The shipment is only the quantity mentioned in the bill of lading. A man can take 100 bales to-day and 100 to-morrow, and so on. The law does not say that the man has to ship 1,000 bales at once. That is my business. I handle cotton.

Mr. BARTLETT. Then this section is intended to make a change in—

Mr. NEVILLE. May I ask you, Mr. Chairman, if you have the changes agreed upon by the Trunk Line Association and by our association last year?

The CHAIRMAN. We have not those changes here. We can not undertake to pass upon a written copy of a proposition of that kind that may be presented here.

Mr. FAULKNER. We would like to see it ourselves, Mr. Chairman. We have not seen it yet. We would like to have an opportunity to see it.

The CHAIRMAN. A new bill has been introduced by Mr. Stevens to cover the changes.

Mr. BARTLETT. Now I will continue my question. I have given the matter some thought, and I have had some letters to answer in regard to this matter. The whole purpose of the bill is to change the law of contract to one of guarantee by the railroads, that in issuing the bill of lading it can not deny that it received the goods, even if it did not receive them.

Mr. NEVILLE. They put a fraudulent piece of paper in the channels of commerce if they have not received it when they say they have.

Mr. BARTLETT. If I were to indorse your note, which we will imagine for the moment was of no value, and if I put your note to the bank, the law punishes me?

Mr. NEVILLE. Yes; the law protects that.

Mr. BARTLETT. But it does not make you liable for that note?

Mr. NEVILLE. No, sir; but it punishes you.

Mr. CALDER. Is much of this kind of business done?

Mr. NEVILLE. A great deal, in the aggregate. If distributed in proportion to the business of the country, it would not amount to a great deal. But unfortunately the losses, when they occur, fall upon one individual.

The CHAIRMAN. This bill affects all freight?

Mr. NEVILLE. Yes, sir.

The CHAIRMAN. So that there is a considerable quantity of it?

Mr. NEVILLE. Yes, whenever there is money paid on the bill of lading.

The CHAIRMAN. But it applies to any freight upon which any bill of lading is issued at all?

Mr. NEVILLE. Yes, sir.

Mr. ADAMSON. The purpose is to make more secure the advances that the bank makes upon these bills of lading?

Mr. NEVILLE. No, sir. The merchants advance money on these products, and never see them. I am a merchant, not a banker. I can not answer as a banker.

Mr. ADAMSON. But you take bills of lading and secure advances on them from banks, do you not?

Mr. NEVILLE. Yes; but the banks do not stand to lose a dollar until I have lost every cent of capital that I have. The banks advance me money on my bill of lading, and—

Mr. ADAMSON. You want it fixed, according to this bill, so that—

Mr. NEVILLE. I want security such as I can rely on and get money from the bank on the bill of lading as collateral when I find it necessary.

Mr. RICHARDSON. Do you ship cotton, or do you buy it?

Mr. NEVILLE. I do both.

Mr. RICHARDSON. Why can you not make the common carrier responsible for the act of the agent who gives a bill of lading for property that he never receives?

Mr. NEVILLE. Well, Judge, if you will recollect last year, we appeared before you, and the railroad attorneys presented their view and declared that it would not be right for them to be obliged to assume any civil liability in this matter, but they were perfectly willing to assume the criminal liability.

Mr. RICHARDSON. What was the reason for their taking that position?

Mr. NEVILLE. The only reason I could assume that they gave for that request was that they wanted to deny any civil liability in the matter at all, because they thought it was wrong in principle, based upon decisions which they had secured in previous cases in the courts.

Mr. RICHARDSON. Did they not take this view of it also, of course, that an agent guilty of an act like that was acting outside his duties as the agent of the railroad, and was actually in conspiracy with somebody else to rob the railroad?

Mr. NEVILLE. Yes. The cases where these losses have taken place were in connection with railroads where the same agent is still doing business for the same railroad at the same point. They did not dismiss him or punish him. You take, for example, the Gulf, Colorado and Santa Fe at Belton, Tex. The agent who signed the papers notified me on the 24th of November that there was no cotton there against he had signed the bill of lading on the 11th of October to about December 12. That man is still the agent of the Gulf, Colorado and Santa Fe Railroad at Belton.

Mr. RICHARDSON. In all the affairs of life is not a man required to exercise due intelligence to inquire as to the integrity of the people with whom he deals, just as in the case of buying a horse, or anything else? If you go and have a bill of lading transferred to you, before you pay money on it ought you not to inquire as to the integrity of it and the circumstances under which it was given?

Mr. NEVILLE. Oh, yes; but—

Mr. RICHARDSON. I do not say a railroad agent should not inquire.

Mr. NEVILLE. From my experience I would say that my opinion is that you can not do that, Judge, because it would block commerce. The only thing that could be done, if the merchants can not get such legislation as this, would be to get together and block commerce still worse than it is now. You gentlemen who live in cotton districts will know and realize that if the merchants and spinners who handle cotton and have it shipped to them lose confidence in the bills of lading they buy, they will refuse to pay those drafts until the cotton has arrived at their port or their mill. Then what will happen? What interior town in the South can do its business in the cotton season on such principles? You have nothing to give security for to get money on. You talk to these transportation men on the subject, and they would say you ought to have it, but when it comes to putting it into law, they object to it.

Mr. RICHARDSON. What objection has the railroad or common carrier to granting these requests?

Mr. NEVILLE. The main objection is that "We can not with the money we pay, get an agent with enough intelligence to discriminate in these affairs in signing these bills of lading." Great God! The

same men that sign these bills of lading quote rates of freight, sell coupon tickets, and handle the express money.

Mr. RICHARDSON. It is not a lack of intelligence, then?

Mr. NEVILLE. No, sir. It is no lack of intelligence and no lack of honesty; and I can say without fear of contradiction that every loss that has occurred on a fraudulent bill of lading has been made upon a shipment from a competitive point, and it is the endeavor and effort of the competitive railroad agent to get that freight that causes the fraud.

Mr. CALDER. That is, then, something in the nature of a rebate?

Mr. NEVILLE. Absolutely. I did not want to mention that because I hoped you would bring out that matter.

Mr. RUSSELL. Will you explain just how that cotton transaction at Belton occurred?

Mr. NEVILLE. I explained it before you came in, Judge.

Mr. RUSSELL. It is not understood how the bank at Belton got the cotton. Just explain the whole transaction, with special reference to the connection of the bank with it.

Mr. NEVILLE. We had been buying cotton in that town for six years previous from the same shipper. Bills of lading were received exactly the same from the same railroad agent on the same railroad. The cotton platform, as it is commonly called, was used as a cotton yard. The cotton yard, let me explain to the gentlemen not familiar with the cotton business, is the place where the farmers bring their cotton in by wagon and deposit it, and take their receipt, and sell, and when they sell the cotton they leave that receipt with the purchaser of the bales. These receipts are usually held by the bank to secure the money paid by the banker for that cotton buyer. When the bill of lading is signed the lot is gotten ready for shipment, and the buyer goes to the bank and gets those tickets for the individual bales and delivers them to the railroad agent or the dray line. In this case they were delivered to the agent, who gave in exchange for those tickets a bill of lading for the number of bales called for by the tickets. He attached that bill of lading to his draft and negotiated it. We began paying those drafts for this particular lot of cotton about October the 12th or 13th, 1906, and paid them until December 12th or 14th. The last bill of lading was dated December 12.

By a system that we have in our office, when we have a bill of lading in our office a week and when the cotton has not arrived, we immediately start a tracer for the cotton represented by that bill of lading, giving its number, point of origin, the date, quantity, and mark covered by the bill of lading, and until that cotton arrives that tracer is kept up once a week.

In 1906, as you will recollect, there was a great freight blockade all over the country from the Atlantic to the Pacific, with the result that that tracer started from our office in Houston on the last bill of lading dated December 12, was investigated by the transportation department of the railroad, and they got their report from the Belton agent, so that it was sent back to them and received during the Christmas holidays, and if I mistake not the letter from the transportation department was dated December 26, the day after Christmas, whereas the agent had been to my office on December 24 and notified me that the cotton had been taken by the banks. I went to Texas and asked the railroad company why the bank had taken the

cotton. They said they claimed that the buyer of the cotton owed them a balance and that they seized that property to satisfy their claim.

Mr. RUSSELL. How did they seize it—on an attachment?

Mr. NEVILLE. No; there was no attachment at all. They simply went in there and hauled it away. I said to the railroad man, "Great God! Do you let the bankers take the cotton from you, when you had your bills of lading against that cotton?" He said, "I took the matter up with our officials in Galveston, and they told us not to do anything." The bankers took the cotton from the Gulf, Colorado and Santa Fe platform and took it over to the Missouri, Kansas and Texas platform and sold it.

The CHAIRMAN. I should think you would want a law against bankers.

Mr. NEVILLE. I am not interested in that. When I pay my money for a bill of lading attached to a draft I want that bill of lading to be what it purports to be.

Mr. ADAMSON. You can not do that without having new laws made. If you have been unable to straighten a matter of that kind with your lawyers you must have tried lawyers who were elementary practitioners.

Mr. NEVILLE. No; we have tried very good lawyers.

Mr. BARTLETT. I have had some experience as a lawyer in this way. I do not know that I can recall a case that amounted to anything where the railroad did not respond, in my country, when they delivered freight to the wrong party or failed to deliver it. The usual practice in the town where I live is for the cotton buyer to go out and buy the cotton and store it, take the warehouse receipt, and go to the bank and get the money for the payment of the cotton. When they come to ship the cotton they draw a draft from the vendee and attach it. The railroad draws a draft and the bank advances the money and sends it forward for collection. Now, with a bill of lading would you pay the draft until the cotton arrived with the bill of lading attached? Would you not inquire at the railroad whether the cotton had arrived or not before it was paid?

Mr. NEVILLE. If you had been doing business with that railroad for years, with the same agent, and the cotton had always come forward with each individual shipment, it would be impossible.

Mr. BARTLETT. You would not wait?

Mr. NEVILLE. No, sir. It would be impossible. This draft is drawn at sight.

Mr. BARTLETT. This is transferred to you and forwarded to the bank and attached to the draft, with the railroad signature attached. Now, you pay the money without really knowing whether the cotton has been shipped or whether it has arrived?

Mr. NEVILLE. Yes; we pay the money, because from previous experience that we have had with that transportation company or carrier, whatever it may be—

Mr. BARTLETT. Just as if anybody would present my note and you had previously discounted that note, and in this one instance you appeared to discount my signature when it was not really my signature?

Mr. NEVILLE. I do not think the parallels are just, Judge.

Mr. BARTLETT. The cotton buyer would get the cotton together and take the warehouse receipt out for the purpose of shipping the cotton, and the bank would trust the cotton buyer with the receipts for the purpose of shipment, and the receipts were sold, and the bank lost the money. I happened to be a stockholder in a bank that lost \$100,000 in such a transaction in the last three years. It was not the fault of the railroad, but the fault of the people who bought the cotton.

Mr. SIMS. In the Belton case the draft was paid when attached to the bill of lading?

Mr. NEVILLE. Yes, sir.

Mr. SIMS. As it is now, you have no recourse upon the road giving the bill of lading?

Mr. NEVILLE. None whatever.

Mr. SIMS. This bill is intended to do what?

Mr. NEVILLE. To compel the railroad to stop denying that they received the goods.

Mr. SIMS. The bill of lading is not now prima facie evidence that they received the goods?

Mr. NEVILLE. Yes. They wanted to get out of it on that basis; but, unfortunately for them, the transportation department that handled the traffic advised me under date of December 26, without the knowledge of the freight department, that the cotton was still on that platform at Belton and would be moved as soon as they could get cars to move it.

Mr. SIMS. They acknowledged receipt of it?

Mr. NEVILLE. Yes. That is the way I got my money out of it without a lawsuit.

Mr. SIMS. The bills of lading we now have are not prima facie evidence, or conclusive, that the railroad received the property?

Mr. NEVILLE. No, sir.

Mr. SIMS. This bill is intended to make it so, and make the railroad responsible for not delivering the cotton?

Mr. NEVILLE. Yes, sir.

Mr. CALDER. How many States are the railroads responsible in for goods covered by bills of lading?

Mr. NEVILLE. I would say that I would prefer to have the men up in the legal part of it answer that question. I know that in the Southern States, where I do cotton business—that in Louisiana, Alabama, and Mississippi the railroads are made responsible.

Mr. STEVENS. The hearings of the last session show a list of the States.

Mr. BARTLETT. The Supreme Court decided in a number of cases that unless the railroad received the freight it could show it had not received it and would not be liable for it.

Mr. NEVILLE. I am not a lawyer, but were not those decisions based upon old English decisions?

Mr. BARTLETT. They were based on the idea that they were a contract of freighting, and not a contract of insurance. That is my understanding of the law.

The CHAIRMAN. I see in the opinion of your counsel it is stated, "the Supreme Court erroneously decided," etc. I believe that is very ordinary practice, is it not, with lawyers? [Laughter.]

Mr. NEVILLE. I am not qualified to answer that.

The CHAIRMAN. A very ordinary practice for people to say that "the Supreme Court has decided erroneously?"

Mr. NEVILLE. Yes.

Mr. STAFFORD. You said in reply to Mr. Calder that the practice really amounted to rebating. I wish you would explain wherein at present it is in the nature of a rebate.

Mr. NEVILLE. Well, if a railroad company will issue a bill of lading for goods before it receives those goods, it enables the shipper of that commodity, whatever it may be, to get his money before he is entitled to get it. He has got his merchandise, whatever it may be, in his warehouse, and he is negotiating a bill of lading that is spurious, and he can take the same goods the next day and deliver them to another company and get another bill of lading on them, and use that.

Mr. STAFFORD. He is pretending to be selling something in the one case that he has not got by reason of a fraudulent certificate. I can not see any connection, however, between that and rebating. That is fraudulently obtaining money.

Mr. NEVILLE. It is putting that man in a position to get money to continue his business unjustly.

Mr. WANGER. It is giving him an earlier accommodation?

Mr. NEVILLE. Yes, sir.

Mr. WANGER. But there may not be any fraud about it.

Mr. NEVILLE. There may not be any intent at fraud, Judge.

Mr. WANGER. But it may be that he is not in a position to deliver completely?

Mr. NEVILLE. Yes, sir.

The CHAIRMAN. The use of bills of lading is very common in the shipment of many classes of goods?

Mr. NEVILLE. Yes, sir.

The CHAIRMAN. Cotton, grain, and live stock?

Mr. NEVILLE. Yes; nearly all farm products, Judge.

The CHAIRMAN. Do not call me judge. I am not a judge.
[Laughter.]

Mr. NEVILLE. I beg your pardon.

The CHAIRMAN. Would it be practicable to carry on the business of the country to-day without a revolution in business methods if the form known as the order bill of lading was abolished?

Mr. NEVILLE. Yes. It is a method that has sprung up as a quick means of identifying property and the ownership of property.

The CHAIRMAN. And under the existing system with the order bill of lading the shipper is able often to get his money to complete his purchase?

Mr. NEVILLE. Yes; to enable him to continue buying that same commodity in that same market. For instance, take a small shipper, with a capital, say, of \$5,000. I can only speak familiarly in regard to my own business. Take a small cotton buyer, with a capital of \$5,000. The bank will ordinarily take that \$5,000 for the margin for three times that much money. They will pay for him \$20,000 worth of cotton, including his \$5,000. In other words, they will advance to him \$20,000 worth on that \$5,000.

The CHAIRMAN. Without security?

Mr. NEVILLE. With the ordinary ticket; the "dray ticket," as it is called. For instance, a farmer comes in and this man buys his bale

of cotton, and suppose he pays 12½ cents for it. He will initial that, and the farmer takes it to the bank and gets his money. At the end of the day those tickets are added up, and the banker advises him how many bales they paid for, and the amount paid. That ticket is the bank's security for the money they paid.

The CHAIRMAN. Will the bank turn over those tickets to the railroad company or the man without getting the bill of lading?

Mr. NEVILLE. The bank will turn those tickets over to the buyer.

The CHAIRMAN. Without security?

Mr. NEVILLE. As a rule it is done on the confidence they have in the buyer, and some of the bankers exact what they call a trust note.

The CHAIRMAN. Without security?

Mr. NEVILLE. Without security; but the receipt, the bill of lading, is deposited with the draft that same day.

The CHAIRMAN. You have not gotten to that yet.

Mr. NEVILLE. He can not get the bill of lading without he surrenders the ticket to the yard man.

The CHAIRMAN. Under the practice and laws of those States that handle cotton, when a bank advances money on this ticket does the bank have any lien on that cotton?

Mr. NEVILLE. Yes, sir.

The CHAIRMAN. What becomes of the lien that the bank has? What is the nature of the lien?

Mr. NEVILLE. The only lien the bank has on that cotton is when the value they pay for is in excess of \$5,000.

The CHAIRMAN. Is the ticket considered the evidence of the title to the cotton?

Mr. NEVILLE. Yes, sir.

The CHAIRMAN. And the bank holds that?

Mr. NEVILLE. Yes, sir.

The CHAIRMAN. Does the bank turn that over to the man again without security?

Mr. NEVILLE. I can not tell you whether the bank in any specific case exacts security or not. I can only tell you the general method of operation.

The CHAIRMAN. You are assuming a case where a man can not furnish security?

Mr. NEVILLE. I am assuming a case where the man is sufficiently well known to the bank, where the bank has sufficient confidence in him, to surrender to him the yard ticket.

The CHAIRMAN. Without security?

Mr. NEVILLE. Yes, without security; and he takes those yard tickets and gets the bill of lading, and takes the bill of lading to the bank and attaches it to a draft, and it is put to his credit.

The CHAIRMAN. Then the bank has confidence in the buyer without security?

Mr. NEVILLE. Yes; that is the initial bank.

The CHAIRMAN. Is it a custom of the bank to turn the ticket over to the buyer, or to the railroad company?

Mr. NEVILLE. Never to the railroad company; to the buyer.

The CHAIRMAN. In the case you specified they turned them over to the railroad company?

Mr. NEVILLE. No, to the shipper. The agent of the railroad company signed the bill of lading on the strength of those tickets.

The CHAIRMAN. I understood you to say that the bank turned the tickets over to the railroad company and received the bill of lading in exchange?

Mr. NEVILLE. No, sir.

The CHAIRMAN. Under your proposition absolutely the only security that the bank receives is its confidence in the buyer?

Mr. NEVILLE. Some banks require a trust note.

The CHAIRMAN. What do you mean by that?

Mr. NEVILLE. A bank will require from the buyer or shipper a receipt stating in effect that yard tickets so-and-so were received in trust by him from the bank in order to secure a bill of lading for the cotton, which bill of lading was to be returned to the bank by the shipper.

The CHAIRMAN. That is signed only by the buyer or shipper?

Mr. NEVILLE. Yes.

Mr. WANGER. The agent signs the bill of lading, which is expected to be handed to the bank when the tickets are given to the buyer?

Mr. NEVILLE. The tickets are never asked for until the cotton is gotten ready for shipment by the buyer.

The CHAIRMAN. Take a case: Here is a lot of cotton in the cotton yards. The bank has the tickets. The buyer goes to the bank and gets the tickets on the strength of his standing as a man. He takes them to the railroad. It may be several days before he can get cars or can get the cars loaded. Would the bank be willing to wait a couple of days?

Mr. NEVILLE. In Texas the railroads are required to issue a bill of lading when the cotton is on the railroad platform waiting to be loaded. They will sign bills of lading when the goods are not in the car.

Mr. SIMS. I happen to live in a cotton-growing locality, and there the bank does not trust the buyer except only for that period of time between the time at which they surrender the ticket and the time when they receive back the bill of lading with the draft attached.

The CHAIRMAN. That is done now just as a bank assumes to pay money on the basis of confidence, but you propose to destroy that confidence?

Mr. NEVILLE. No, you are mistaken, Mr. Chairman, if you think the railroad company is going to issue a bill of lading on tickets unless the cotton is on the platform.

The CHAIRMAN. I thought you just told us of a case that was not in that way.

Mr. NEVILLE. That case at Belton was a case where the cotton actually was on that railroad platform. I was careful to make that plain. I tried to make it plain.

Mr. SIMS. As a rule they do not usually issue bills of lading until the cotton is actually and physically in their possession.

Mr. CALDER. Is the ticket issued when there is no cotton?

Mr. NEVILLE. I have never heard of that.

Mr. TOWNSEND. When the bank receives tickets from the yard, that is a guaranty that the cotton is actually there and delivered?

Mr. NEVILLE. I have never heard of a case like that, Mr. Townsend.

Mr. TOWNSEND. When the bank has those tickets showing the deposit or the delivery of the cotton, then something happens that

disturbs the bank sometimes; the shipper does not ship the cotton when he gets a bill of lading. Is that correct?

Mr. NEVILLE. I do not know whether I follow you exactly.

Mr. TOWNSEND. I understood your complaint was that when you get your bill of lading you are not always sure that there is cotton back of it; you are not always sure that you are going to get your cotton. I understood that is what you are complaining about.

Mr. NEVILLE. Yes; that is what I am complaining about.

Mr. TOWNSEND. When this cotton is delivered, and the tickets have been received by the bank, the bank gives up the tickets when the bill of lading is returned?

Mr. NEVILLE. No; the bank gives up the tickets before the bill of lading is received.

Mr. TOWNSEND. What happens to the cotton in the meanwhile?

Mr. NEVILLE. If the agent, as they have done at some competitive points, will give that man a bill of lading, he will say, "Here are the tickets, and I am having the cotton drayed to the station, and it will be all finished this afternoon."

Mr. RICHARDSON. And does not do it?

Mr. NEVILLE. Yes. In that case it is a bill of lading without receipt of goods, and the man might probably take the cotton and unload it at another railroad station if he was dishonest. But the man who buys the bill of lading, Mr. Townsend, on the strength of the promise to deliver that cotton that afternoon, does not know what has taken place.

Mr. RICHARDSON. I understood that a bill of lading, granted for 100 bales of cotton, is carried to the bank and the bank accepts it and advances money on it, and when the cotton covered by it is found to be only 80 or 90 bales, that is one of the conditions you are complaining about?

Mr. NEVILLE. Yes.

Mr. RICHARDSON. You want this bill of lading to be accepted as absolute and conclusive liability on the part of the railroads?

Mr. NEVILLE. Yes, sir.

Mr. RICHARDSON. And you are trying to account for that shortage?

Mr. NEVILLE. Gentlemen, questions are being put to me on various lines of this matter, and I am trying to answer as best I can.

Mr. RICHARDSON. You are answering very promptly and very well, I may say.

Mr. NEVILLE. Thank you.

Mr. SIMS. Does the bill of lading show the quality of the cotton?

Mr. NEVILLE. No, sir.

Mr. WANGER. When it goes to the bank there is an indication on the ticket as an indication to the buyer of the value of the cotton?

Mr. NEVILLE. Yes, sir.

Mr. WANGER. Does the draft indicate the value of the cotton?

Mr. NEVILLE. Yes; the draft indicates the value of the cotton.

Mr. WANGER. It is for the price paid?

Mr. NEVILLE. Yes, sir; and the quality.

Mr. CALDER. The bank in Texas on the delivery surrenders these receipts to the shipper, and the shipper goes to the railroad company and in exchange for these checks he gets the bill of lading and takes them back to the local bank, and with the draft attached they

forward that to the man to whom the cotton is being sent in the North?

Mr. NEVILLE. The man on whom the draft is drawn.

Mr. CALDER. He pays that draft, and then when he needs the money he takes the bill of lading again and deposits that in his bank in his home place, and borrows money on that?

Mr. NEVILLE. Yes, sir.

Mr. CALDER. Now, the bank at the point of shipment has received its money as the result of the draft, but the merchant does not get his cotton, and some time later the bank that accepted the bill of lading sues him and recovers from him and the fellow at the point of shipment sues him and does not make good?

Mr. NEVILLE. I do not follow the last part of that.

Mr. CALDER. I say the draft is forwarded to the point of shipment where the cotton ought to go on the merchant there, and is paid there by him, or by borrowing money from the bank where he gets his money, and the cotton never gets here, and he is responsible to the bank and is not able to recover. Is that right?

Mr. NEVILLE. Yes, sir.

Mr. STEVENS. If you felt doubtful about the receipt of the cotton on the bill of lading and required the goods to be in your possession before you pay for them, how long would that be, ordinarily, during the business of the cotton season?

Mr. NEVILLE. Normally I should say four weeks as the average. That would cover it, although there are times in the rush cotton season where it would be nearer to seven or eight weeks. That is for a period. But taking it on a season through, it would be about four weeks, I should say, dependent, of course, on the distance.

Mr. STEVENS. How long does it require for the bill of lading after it is deposited in the post-office, say in Texas, to reach you and be paid in due course of business, with sight draft attached?

Mr. NEVILLE. From seventy-two to ninety-six hours.

Mr. STEVENS. So that if you required it or if the mercantile world required the goods to be actually delivered, there would be a difference of a month or six weeks in the payment to the buyer?

Mr. NEVILLE. Yes, sir.

Mr. STEVENS. What difference would that make in moving the cotton crop in the smaller places in the South?

Mr. NEVILLE. It would have the effect of eliminating the smaller men.

Mr. STEVENS. So that only men of large business ability and business credit could purchase cotton?

Mr. NEVILLE. Yes, sir.

Mr. SIMS. And would it not have the effect of depressing the price of cotton to the extent of the delay and the disturbance of the free movement?

Mr. NEVILLE. Yes. When you limit the buyers, you create that much less demand.

Mr. STEVENS. That is all, Mr. Neville.

The CHAIRMAN. Who is the next to be heard?

Mr. NEVILLE. Mr. Chairman, do you want to have the whole case gone right through again?

The CHAIRMAN. We want all the information we can get.

STATEMENT OF MR. GEORGE F. MEAD, OF BOSTON, MASS., REPRESENTING THE NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES, AND THE BOSTON CHAMBER OF COMMERCE.

Mr. MEAD. Mr. Chairman and gentlemen of the committee, I think that Mr. Neville has explained quite fully the provisions of this bill. When we remember that the banking interests of the country, in the financing and movement of crops, furnish billions of dollars in the course of a year, you can realize how important legislation of this kind must be.

We feel that the business interests, as well as the banking interests, are entitled to the protection asked for under this bill, on account of the money involved and on account of the lack of protection that those interests have had in the past. It is true that, in our line of business, especially, a very large percentage of the goods shipped are moved through order and straight bills of lading upon which the money is paid at once.

This bill provides protection to the men who advance the money and to those interested in the commodities shipped, and we feel that its provisions are simply fair and equitable and just to all interests concerned.

I do not know that I can add very much to what has been stated by Mr. Neville. You had, I think, three or four hearings upon this bill at the last session, and the evidence and the arguments that were put forth then all hold at the present time. I think many, if not most, of the railroads are willing to concede practically what we ask for in this amended bill.

Mr. STEVENS. With two or three questions, Mr. Mead, I think we can get at what you want to tell us. What is the line of merchandise that you represent, or the people you represent?

Mr. MEAD. Well, the National League of Commission Merchants, representing commission merchants who handle very largely the perishable food products of the country. That business is done very largely on order and straight bills of lading, especially the latter.

Mr. STEVENS. You are familiar with the lines of business in New England—personally familiar?

Mr. MEAD. Yes, sir.

Mr. STEVENS. Where do the goods come from that you ordinarily buy?

Mr. MEAD. They come from the South and the West largely. You mean the goods that I deal in personally?

Mr. STEVENS. Yes.

Mr. MEAD. From the South and West.

Mr. STEVENS. What kind of goods?

Mr. MEAD. Poultry and perishable goods of all kinds. That is what I deal in personally. I also represent here, in the Boston Chamber of Commerce, the largest commercial organization of the country, whose members are interested in the provisions of this bill because they deal largely in grain, cotton, and wool, and other commodities which are handled very largely through the medium of bills of lading upon which advances are made.

Mr. STEVENS. How long does it ordinarily require a bill of lading to reach you from the place where the goods are shipped, attached to a sight draft?

Mr. MEAD. Frequently the perishable goods reach us before the sight draft would reach us. The time ordinarily would depend upon the part of the country the goods came from.

Mr. STEVENS. So that in case this bill would not pass, there would be no delay so far as you are concerned?

Mr. MEAD. On straight bills of lading for perishables there would be no delay.

Mr. STEVENS. So that this bill would not expedite the financing of this sort of merchandise?

Mr. MEAD. No.

Mr. STEVENS. Then why do you want it?

Mr. MEAD. We want it because we believe it would protect us, the shippers, and all parties in interest. Of course, the bill of lading is practically a contract between the shipper and the railroad, and the banking interests and the people who advance the money are not adequately protected under it. It has not that protection of the law that it ought to have, in view of the fact that it is used as a negotiable instrument. We believe that the party who advances the money or who acquires the bill of lading for value advanced is entitled to the protection asked for in this measure.

Mr. STEVENS. You want that as a protection against fraud?

Mr. MEAD. Yes, sir.

Mr. STEVENS. That is all.

The CHAIRMAN. Just a word, Mr. Mead. When we read, "No bill of lading can be issued unless the property actually described therein has been received," what do you understand by that language?

Mr. MEAD. I think that may mean where it is in process of delivery by a connecting road, though not actually received as yet. I believe some of the railroads issue bills of lading before the property is actually in their physical possession. But if it is in process of delivery to them by a connecting road I think this would be held to cover such shipments.

The CHAIRMAN. "As to the property described therein." Is it always practicable for the railroad company to ascertain whether the property as described is actually delivered to them?

Mr. MEAD. I presume not always. We do not ask in this bill, of course, a guaranty of the quality, but so far as possible the description of the goods should follow the bill of lading.

The CHAIRMAN. You say you do not ask the railroads to guarantee the description of the quality; but supposing the railroad delivers to you a bill of lading describing certain goods: Under this bill are they not obliged to deliver that quality of goods as described in the bill of lading, regardless of whether such goods were delivered to them or not?

Mr. MEAD. That applies, does it not, to the description of the goods? Do you mean that they are absolutely held for the value of the goods as described? They may not be able to know, perhaps, the contents. Taking cotton, of course that is apparent. They can see that it is cotton.

The CHAIRMAN. But they can not see the quality?

Mr. MEAD. No. We do not ask that that shall be guaranteed.

The CHAIRMAN. Take barreled goods.

Mr. BARTLETT. Take potatoes, for instance.

The CHAIRMAN. Can the railroad company ascertain what is the description of the goods except as the description is furnished to them?

Mr. MEAD. Ordinarily they can. The potatoes are shipped from a potato-growing section, and the agent there would know whether potatoes were being shipped or something else in those barrels. Ordinarily I would not say that that would be a certain guide, but taking goods shipped from the cities, there might be something in the barrels different from what is described in the bill of lading.

The CHAIRMAN. Does not this in effect require the railroad companies to insure the quality of the goods where they are held liable for the value of the goods that are described?

Mr. MEAD. Only in case they received that kind of goods.

The CHAIRMAN. Suppose they do not?

Mr. MEAD. I do not think they would be held liable. I do not think they could be held liable under the bill in that way.

Mr. WANGER. You do not ask any separate provision as to perishable goods?

The CHAIRMAN. There is a separate provision on page 6, in lines 14, 15, 16, and 17, that covers the subject of perishable goods.

Mr. BARTLETT. They do not have to give a bond?

The CHAIRMAN. No. That permits perishable goods to be sold under the bill of lading.

Mr. MEAD. We have a different form for perishable commodities; that is, the National League has, and we have asked the Commission to recommend that form for this shipment of perishable goods, but we have not been able as yet to get the Commission to make recommendation.

Mr. WANGER. You mean the Interstate Commerce Commission?

Mr. MEAD. Yes, sir. The same form should not apply to highly perishable goods that applies to dead freight, such as iron, coal, lumber, and heavy freight of this class.

The CHAIRMAN. This would authorize the railroad companies to dispose of perishable goods in a different way from other classes of goods?

Mr. MEAD. Yes.

The CHAIRMAN. That is covered here.

STATEMENT OF MR. THOMAS B. PATON, OF NEW YORK, COUNSEL REPRESENTING THE AMERICAN BANKERS' ASSOCIATION.

Mr. PATON. Mr. Chairman and gentlemen on the committee, before I commence I want to disabuse your minds of a wrong impression. When you made the remark, Mr. Chairman, that a counsel of the bankers had characterized the decision of the Supreme Court as "erroneous," it was not myself who so characterized it. I think you will find that in the remarks of another counsel in the conference out in Chicago. It was not in my language.

Now, briefly, the underlying principles of the measure before you—

The CHAIRMAN. Whose language was that?

Mr. PATON. I think it was Mr. James's. I would not assert that positively, but I have heard him use that language.

Now, the underlying purpose of this measure is to give integrity and validity to the bills of lading issued by carriers for interstate and foreign shipments. The time was when the contract of shipment was, as stated, a mere contract of affreightment, a mere matter between the shipper and the carrier. Therefore if there was anything in the bill of lading that was untrue, it was simply a contract of affreightment and could not be enforced by anybody against the carrier. But in the last thirty years or more a custom has grown up in this country, whereby the bill of lading is no longer a mere contract of affreightment, no longer a mere contract between shipper and carrier, but a contract in which two other parties enter, namely, the consignee who pays a draft on the face of the bill of lading and the banker who loans money on the face of the bill of lading. The contract is no longer a mere contract of affreightment by the custom of the country, but it has become an instrument of credit upon which enormous values are advanced upon the faith and credit of the statements contained in that bill.

Now, the object of this measure is simply to recognize such instrument of credit and make it valid.

Mr. STEVENS. You do not mean valid?

Mr. PATON. In the hands of a bona fide holder who gives value upon it. The purposes or objects in the bill are four in number: First, to make the bill good in the hands of a holder for value, where it has been issued, without the goods having been received. Second, to make the bill good in the hands of a holder for value where the goods have been delivered without the taking up of the bill, where it has been left outstanding. Third, to make the bill good for its original tenure where it has been altered and where, by the common law, it would not be completely destroyed by the alteration. And fourth, to make the bill contain or omit certain provisions as to form, such as the words "order of," and the omission of "into negotiable and order bills," which have been recommended by the Interstate Commerce Commission, and which have a tendency to make the bill a more perfect instrument of credit.

Now, this measure so proposed is no dream. It is no impracticable measure. The fact is that at the present time in this country the legislatures of 11 States have enacted in substance what this bill enacts, and the courts of 6 other States have, by the application of the doctrine of estoppel, created or established the same rule, that the carrier shall be liable on the bill when there are no goods behind it, on the ground of an estoppel. The federal courts are the other way.

The question first arose in England in 1851, in the case of *Grant v. Norway*. The master of a ship had signed a bill of lading for 12 bales of silk, no silk having been received on board. The bill of lading had been purchased for value by the shipper. The pledgee sought to hold the owner of the vessel responsible. The decision was that the owner was not liable. The court held that the master of a ship has no general authority, as such, to sign a bill of lading for goods which are not put on board the vessel; and consequently the owners of the ship are not responsible to a bona fide pledgee for value of a bill of lading which has been signed by the master without receiving the goods on board. The decision was placed on the ground

that under the general usage and practice of shipmasters, which was generally known, the authority of the captain to give bills of lading was limited to such goods as had been put on board; and that such general usage was notice to all people of the limit of the master's authority. Therefore a person taking a bill of lading, either originally or by indorsement, where the goods have not been put on board, is bound to show some particular authority to the master to sign the bill in that form; else he can not recover.

Other decisions, along the same line, led the English Parliament five years later to enact careful legislation to the same purpose and intent as the measure now before you. In that legislation, chapter 111, 18 and 19 Victoria, enacted on the 14th of August, 1855, it was provided:

Whereas, it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a bona fide holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

II. Nothing herein contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

III. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment, as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

So the English decisions, upon which the Supreme Court of the United States founded its ruling, which has since been followed by the federal courts of the country, have been overturned by the statute of Victoria. In this country in the same way we find that the decisions following the old common-law rule, based on the idea that the bill was a mere contract of affreightment, not an instrument of credit, have been overturned by statutes, and those statutes are not any more particular in regard to the description of the goods than the present measure is.

Allow me to refer to the statute of the State of Alabama. It provides—

If any common carrier, not having received things or property for carriage, shall give or issue a bill of lading or receipt as if such things or property had been received, * * * or shall give or issue a second bill of lading or receipt, the original being outstanding, not expressing in such second bill of lading or receipt that it is a duplicate, * * * such carrier * * * is liable to any person injured thereby for all damages, immediate or consequential, therefrom resulting.

That is from the code of 1896, section 4223. Bills marked "not negotiable" excepted.

Now let me quote the supreme court of Alabama as to the policy and necessity for such legislation, in the case of *Jasper Trust Company v. Railroad* (99 Ala., p. 416):

The legislature realizes that carriers or their agents might be negligently or unintentionally derelict, and that damages, immediate or consequential, might result therefrom. The statute fixes the loss thus occasioned upon the carrier. Its intent is to punish and prevent the giving of a bill of lading when the property or thing is not in fact received for transportation.

A bill of lading regular on its face and issued by a carrier or its authorized agent is a certificate that the person to whom it is issued is the shipper of the property or the goods therein described, that they really exist and are subject to the order and direction of the shipper unless the bill of lading furnishes notice that such is not the fact. And our statute is authority for any one to deal with the person to whom such bill of lading is issued, on the basis that the property or goods in fact exist, are in the possession of the carrier, and subject to the conditions expressed in the bill of lading. Anyone to whom such bill of lading is indorsed and transferred by the person to whom it was issued, and who parts with value and becomes the innocent holder of it without notice, may hold the carrier responsible for the truth of its recitals, and for damages to the extent he may have advanced on its genuineness and truth as a bill of lading. As between the railroad company and anyone who shows himself a bona fide transferee and purchaser of the bill of lading, the corporation is estopped from denying that it received and holds the cotton specified in the receipt.

That is the legislation in Alabama, and the policy of that legislation is to make the carrier liable on the bill in the hands of a bona fide holder, although the goods are not received.

THE CHAIRMAN. Does that Alabama law apply to shipments out of the State?

MR. PATON. That Alabama law would apply to a bill of lading issued in the State for shipment out of the State. The only reason why a law of Congress governing bills of lading is desirable is in view of the conflicting state decisions and the necessity or desirability of uniformity, in view of the fact that 90 per cent of the shipments are interstate shipments.

Now, I want to impose on your time one brief moment longer to quote the language of the supreme court of Kansas, as it is very pertinent. In the State of Kansas there is no statute. They hold the same liability of the railroads on the ground of estoppel in a case where a bill of lading certifying that certain grain had been shipped when the grain had not, in fact, been received, and the supreme court in holding the carrier liable to the commercial holder said:

Our State is a great producer of grain, large amounts of which seek markets outside of its boundaries—

That is the case of *Bank v. Railroad* (20 Kans., p. 519)—

Our State is a great producer of grain, large amounts of which seek markets outside of its boundaries. The means of its transportation are mainly limited to railroads, and commercial transactions by grain dealers extend to millions each year. The great mass of these products, when started to eastern markets, are purchased and paid for through bills of lading. The custom of grain dealers is to buy of the producer his wheat, corn, barley, etc., then deliver the same to a railroad company for shipment to market. The railroad company issues to the shipper its bill of lading. The shipper takes his bill of lading to a bank, draws a draft upon his commission merchant, or consignee, against the shipment, and attaches his bill of lading to the draft. Upon the face of the bill of lading, and without further inquiry, the bank cashes the draft, and the money is thus obtained to pay for the grain purchased, or repurchase other shipments. In this way the dealer realizes at once the greater value of his consignment, and need not wait for the returns of the sale of his grain to obtain money to make

other purchases. In this way the dealer with a small capital may buy and ship extensively; and while having a capital of a few hundred dollars only, may buy for cash, and ship grain valued at many thousands. This mode of transacting business is greatly advantageous both to the shipper and producer. It gives the shipper who is prudent and posted as to the markets almost unlimited opportunities for the purchase and shipment of grain, and furnishes a cash market for the producer at his own door. It enables the capitalist and banker to obtain fair rates of interest for the money he has to loan, and insures him, in the way of bills of lading, excellent security.

It also furnishes additional business to railroad companies, as it facilitates and increases shipments of produce to the markets. A mode of business so beneficial to many classes ought to receive the favoring recognition of the law to aid its continuance.

Mr. BARTLETT. May I ask you a question?

Mr. PATON. Yes, sir.

Mr. BARTLETT. In those States where you have such a law as you quoted in Alabama, in a suit at common law in the United States court even, or a court in a case of common law, would it apply the statutory law of Alabama to a case arising under such contract in a United States court?

Mr. PATON. I believe the Federal courts would necessarily follow the State statutes.

Mr. BARTLETT. In so far as those States are concerned, they have enacted a law to estop the railroads from denying that they have received the shipment. I call it "the United States court;" you call it "Federal court," but it is the same thing. In such a court in a suit against a railroad for giving up a bill of lading when it had not received the goods and they had not been delivered; the consignee should recover from the person who held the bill of lading, even in the Federal courts on such a case?

Mr. PATON. I believe the Federal courts would be bound to apply the State statute.

Mr. BARTLETT. It would be the duty of the court, except in constitutional questions, to so construe the case?

Mr. PATON. Yes; where there is no State statute, then, of course, the common-law rule would apply, the rule of the Federal court being that the carrier was not liable, as the agent who gives it when the goods are offered is liable. The law is to the same purport. In 11 of the States we do not need the law, but in 35 other States we do need the law.

The CHAIRMAN. Before you are through, Mr. Paton, I wish you would address your attention to the question asked by Mr. Bartlett as to the power of Congress to determine what the effect shall be in a State court of a bill of lading. Assuming, for the purpose of argument, that we have the power to prescribe the form of the bill of lading, have we the power to prescribe what the effect of that shall be in a suit brought by a citizen of a State against another citizen of a State in a state court? And, further, in the form which your association has adopted, or some association, on the subject, "on a state law covering the bill of lading, you propose to put in these negotiable bills issued in this way for the transportation of goods to any place in the United States, on the continent of North America, except Alaska," etc., has the State the power to determine the form and effect of a bill of lading issued on interstate shipments of freight so far as relates to its own courts; and if so, has Congress the authority to override the State in that respect?

Mr. PATON. Without an act of Congress, do you mean?

The CHAIRMAN. I do not care whether you take it up now or later on. You may proceed in your own way.

Mr. PATON. I was nearly finished, Mr. Chairman.

I was about to proceed by referring to the fact that this bill to which I have referred simply changes the law in certain States and conforms with the law in other States; that is, changes the bill of lading from a contract of affreightment to a guarantee of the goods, there being 11 States where legislation exists now on the subject. Four legislatures enacted such statutes last year substantially in the form of last year's bill here—the form in which the bill before this committee was drawn, and 6 States have declared the same rule of liability on the ground of estoppel, so that there are now 17 States wherein bills of lading are recognized as instruments of credit.

Now, a mere word. The question was asked here this morning: "Is the object of this legislation to protect against cases of fraudulent bills of lading?" True, but also, accommodation bills; bills issued without any real fraud by an agent to accommodate the shipper who has not his goods ready at the moment, but who will have them down in a day or two.

Testimony has been given before this committee of numerous cases of that kind; so that there are those two views, which stand out clearly, that the enactment of this measure would correct. Now, I might say, in closing my main remarks, that last evening a meeting was held by the proponents of this measure with the attorneys representing the Traffic Association of the Eastern Classification territory, and at that meeting it was stated that the situation was this, that certain suggested changes in this measure, which have now been made, and a few of them presented, the attorneys for the Eastern Classification territory would not have any objection to either the form or the substance of the measure, and while the attorneys for the Western and Southern roads objected to the general principle, or the general proposition, of making the carrier liable on a bill of lading as an instrument of credit where the goods were not received, they delegated to the attorneys for the Eastern Traffic Association the matter of form, they would have no objection to the form. So the whole issue here to-day would be the underlying one whether or not we are to recognize the commercial uses of bills of lading and provide for them as instruments of credit by making the carrier liable thereon where no goods have been received or where the goods have been delivered without taking up the bill.

The CHAIRMAN. Don't you think we are entitled to be consulted as to the form of the bill?

Mr. PATON. Undoubtedly. But I was stating their attitude. Now, are there any other questions that you desire to ask?

The CHAIRMAN. I would like to have you cover the question I asked.

Mr. STEVENS. And when you have covered the Chairman's question, I have some questions as to the form.

The CHAIRMAN. And I want to ask him some questions as to the form, and also as to this language in reference to the property described therein and as to the issuance of duplicate bills of lading, and the provision in your bill which requires, in the case of a bond

being given and goods delivered on the bond, that the original bill of lading shall be delivered to the carrier, although, perhaps, it may have been lost and a duplicate issued in place of it.

Mr. PATON. As the bill is now advocated and presented, sections 5 and 7, relating to the criminal penalty in the taking of a bond, are entirely omitted.

The CHAIRMAN. That may be, but we are still entitled to ask for information as to the bill; we may not agree to the changes you have suggested.

Mr. PATON. What was the question?

The CHAIRMAN. Well, the question which I addressed to you before; the question of the effect of the language in the bill in several places, the property as described therein and issuing of duplicate bills of lading, and the delivery of the original bill of lading, where a bond has been given, although a duplicate bill of lading may have been issued, and under what terms a duplicate bill of lading may be issued.

Mr. PATON. I take the language as described to cover the manner of description, with all the conditions of description stated in the bill.

The CHAIRMAN. Suppose the description is so many boxes of silk; what will that mean?

Mr. PATON. The words of the bill, "Contents and condition of contents unknown," constitute a part of that description as prescribed. That means we have received so many boxes of silk, but we do not know the contents; that is the description.

The CHAIRMAN. You mean you have received so many boxes marked "boxes of silk?"

Mr. PATON. As described. This is simply to make the carrier stand for the truth of the recitals in the bill.

The CHAIRMAN. It prohibits the carrier from denying the receipt of the property as described therein?

Mr. PATON. As described.

The CHAIRMAN. Do you mean to say that that means nothing unless the property has been received in fact?

Mr. PATON. I should say where 100 boxes of silk did not contain silk that the carrier would not be estopped from denying that the silk was received, that he would simply be estopped from denying that he received 100 boxes said to contain silk, but contents unknown. All that comes in as part of the description. In none of these state statutes do they qualify all those things.

The CHAIRMAN. We are not talking about the state statutes which have been recently enacted and not contested.

Mr. PATON. Some of them have been on the books for forty or fifty years.

The CHAIRMAN. We are not satisfied with those old statutes; we are not satisfied with the English statutes.

Mr. PATON. The Alabama statute has been contested with reference to the description.

The CHAIRMAN. You have quoted the English statute, but you have not followed the idea of the English statute in the bill. The English statute only provides that the holder of the bill of lading shall be in the same position as the person who received the bill of lading.

The provision of the English statute is that the contract in the bill of lading in the hands of the holder——

Mr. PATON. Shall be conclusive evidence.

The CHAIRMAN. Shall be the same as though the bill of lading had been made with himself.

Mr. PATON. I did not bring in that part of it because——

The CHAIRMAN. I know; but I do, because that is what the statute is.

Mr. PATON. That is one part of the statute that relates to the assignability and negotiability of the bill, which is no part of this measure.

The CHAIRMAN. You read in the English statute that it should be conclusive evidence, but you did not read the rest of it where it says it is not conclusive evidence. The English statute says:

Provided, That the Master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

You have no such provision in this bill? That is the English statute, that language which I have just read.

Mr. PATON. I do not think it is necessary.

The CHAIRMAN. I am not saying whether it is or is not; I am trying to get your point of view.

Mr. PATON. I simply read the part of the English statute which I considered pertinent to this measure.

The CHAIRMAN. But you did not consider the part that I read that modifies the part that you read. What do you say of the constitutional question?

Mr. PATON. I would say as to the constitutional question that Congress, under the constitutional power to regulate commerce, has power to regulate the bill of lading in the way this measure provides; that a bill of lading is essentially an instrument of commerce, it is issued with every shipment; that Congress, in the Harter Act, enacted a law which regulated bills of lading by providing that the carrier should not put certain provisions in that bill which limited his liability as to loading and so on, that the Carmack amendment provides and regulates bills of lading by providing that the initial carrier shall be liable to the holder of the bill for loss or damage.

Mr. BARTLETT. The loss or damage that may occur on a connecting line?

Mr. PATON. On a connecting line. That those two acts constitute precedents for this measure, which is simply going further and regulating the liability of the carrier where no goods have been received, making him responsible for the integrity of his bill, and the truth of the recitals.

The CHAIRMAN. You go a great deal further in this bill. You prescribe the liability on a suit in a state court. Now, if we have jurisdiction, under the commerce clause, to regulate both the form and effect of a bill of lading, is that exclusive jurisdiction?

Mr. PATON. I think if this statute were enacted it would be exclusive in a federal court.

The CHAIRMAN. With this statute being enacted is it exclusive jurisdiction which we have? For instance, the State has no authority, in the absence of congressional legislation, to prescribe what the rate shall be upon shipments from one State to another. Now, is our jurisdiction exclusive?

Mr. PATON. It is when exercised.

The CHAIRMAN. Is it when not exercised?

Mr. PATON. No.

The CHAIRMAN. Then have we any jurisdiction?

Mr. PATON. You have jurisdiction. But I understand there is a line of decisions to the effect that so long as Congress has not exercised its jurisdiction, has not expressed its views in the matter of the bill of lading, the States have a right to exercise jurisdiction and to regulate bills, whether they be for intrastate or interstate shipments.

The CHAIRMAN. Have you any decisions on that subject?

Mr. PATON. I think I can furnish you some.

The CHAIRMAN. I think not; I think you will find the decision of the Supreme Court, on the question of concurrent jurisdiction, is that the States have concurrent jurisdiction over the subject-matter over which Congress has not legislated, where it is local in its character. But here is a proposition to prescribe the effect of a bill of lading issued in Texas, the effect of that bill of lading in Portland, Me.

Mr. ADAMSON. I call attention to the fact that it seems to me he has provided a lot of federal offenses, and provided for the trying of people in the federal courts for acts of fraud, cheating, swindling, and rascality that happened within the States and are clearly liable to prosecution in the States.

Mr. PATON. All those criminal penalties are abandoned, to simplify the measure. I will say that I am not prepared to argue fully on that question of the constitutional power. You have on file in the records here two briefs by the Hon. Henry W. Taft in which I had supposed that question was covered fully. I would refer to those; I am not equipped now to take up that matter. I may say also, in my own behalf, that it was not until Saturday morning that I knew that I was to come here on this matter; that Professor Williston was to have taken the place I am now taking, but he is now seriously ill.

The CHAIRMAN. I have been in correspondence with you for some time and I thought you were the one to ask about these matters.

Mr. PATON. Well, in a general way.

Mr. BARTLETT. You have spoken of a line of Federal decisions holding that Congress had the power to regulate, and if not, it was an acquiescence upon the part of Congress that the State might, until Congress acted or exercised that power; there is another line of decisions, and more recent ones, in conflict with that which hold that the fact that Congress does not exercise the power to regulate commerce is an indication that Congress intends that the State shall not interfere with it, but it shall remain free; so you have them on both lines by the Supreme Court.

Mr. STEVENS. I have always had some doubts along the line indicated by the chairman. Have you given any attention to this phase of the matter; and if so, what authorities have you bearing on it: That Congress has the right to regulate the practices of interstate carriers, which practices may create an obligation as a necessary part of that practice, and that that practice and obligation, which is a necessary part of it, must necessarily be under the control of Congress where it concerns interstate or foreign transportation. Have you any views or authority?

Mr. PATON. I have never given any particular attention to that.

Mr. STEVENS. Well, we are about to adjourn, and I would like to have your answer after adjournment. I notice in the amendment suggested about the same language that you use in section 4, that if a bill is issued before the whole of the property as described therein shall have been actually received there shall be a liability in good faith relying upon the description therein of the property, or its failure to correspond with the description thereof. Now, have you any similar statutes in any of the States containing that sort of language and its interpretation by the courts of those States? It seems to me that language would clearly require a guaranty by the carrier of the quality of the goods under that amendment. I would like to have your views upon that this afternoon.

Mr. TOWNSEND. Mr. Barlow was asked some questions by Mr. Stafford the other day in reference to contracts which express companies have with railroads and in reference to the stocks held by the railroads in express companies; Mr. Barlow said he did not have it, but would obtain the information. I simply want to ask permission that he may insert that information in the record.

The CHAIRMAN. He can hand it to the stenographer and it may be inserted.

[Extracts from Special Reports, Express Business in the United States, 1907, Department Commerce and Labor, Bureau of the Census.]

The usual contract made by an express company with a railway company provides that the railway company shall furnish the necessary cars, heat and light them, haul them over its lines, together with the employees of the express company necessary to care for the traffic en route. At stations the railway company permits its employees to act as employees of the express company also, with certain restrictions, and permits the use of station facilities by the express company.

The express company on its part assumes all risk for damage to express matter and all liability for injury to its employees, and agrees to pay the railway company a fixed per cent of its gross earnings, with a guaranteed minimum amount. It was formerly the custom to make the contracts upon a tonnage basis, but the gross earnings plan is now in general use. After deducting the amounts paid carriers for express privileges, the remainder is available for payment of all expenses of operation, interest, taxes, dividends, etc.

TABLE 11.—*Capitalization of express companies, 1907.^a*

Company.	Amount of capital stock.
Total	\$68, 853, 200
Adams Express Co. ^b	12, 000, 000
Alaska Pacific Express Co.	100, 000
American Express Co. ^b	18, 000, 000
Electric Express Co.	12, 500
Globe Express Co.	3, 000, 700
Great Northern Express Co.	1, 000, 000
Hatch Express Co.	35, 000
National Express Co. ^b	500, 000
Northern Express Co.	5, 000, 000
Pacific Coast Express Co.	5, 000
Pacific Express Co.	6, 000, 000
Porto Rican Express Co.	100, 000
Southern Express Co. ^b	5, 000, 000
Southern Indiana Express Co.	50, 000
United States Express Co. ^b	10, 000, 000
Wells, Fargo & Co. Express ^c	8, 000, 000
Western Express Co.	50, 000

^a Only 17 companies represented. The other 17 companies were either foreign corporations, unincorporated organizations, or departments of railway companies.

^b This company has no capital stock. There are shares of interest, which for this purpose have been given a nominal par value of \$100.

^c This company is engaged under its charter in both the banking and express business.

TABLE 19.—*Holdings by express companies in the funded debt of railway companies, June 30, 1906.^a*

Company.	Amount of bonds held.
Total	\$12,324,000
Adams Express Co.	902,000
American Express Co.	6,730,000
Globe Express Co.	22,000
Southern Express Co.	215,000
United States Express Co.	3,454,000
Wells, Fargo & Co. Express.	1,001,000

^a Compiled from Senate Document No. 278, Sixtieth Congress, first session.

The railway companies on June 30, 1906, held \$20,668,000 of the total capital stock of express companies. On the same date the express companies held \$34,542,950 in the stocks and bonds of railway companies and \$11,618,125 in the stock of express companies. The last figures are greatly in excess of those shown in Table 14 and would indicate a decided lessening in the holdings of the companies in 1907 in the stock of other express companies. It is possible, however, that an unknown amount of such stock is included under "other permanent investments."

Thereupon, at 12 m., the committee adjourned to meet at 2 p. m.

STATEMENT SUBMITTED BY JAMES BYRNE CONCERNING THE ISSUANCE OF STOCK, BONDS, AND OTHER EVIDENCE OF IN- DEBTEDNESS BY COMMON CARRIERS.

In accordance with the permission the committee has been kind enough to give me, I have prepared very hastily the following summary of my opinions on certain claims of the proposed bill.

I understand the general purpose of the bill, so far as it relates to the issue of bonds and other evidences of indebtedness and stocks by railroad corporations, is to prohibit the issue of stock for less than par in money or property; and the issue of bonds or other evidences of indebtedness for less than par, or if below par, for less than the market value, in money or property; and to require the question what such market value is, and the question what the value is of property for which stock or bonds are to be issued, to be determined by the Interstate Commerce Commission.

Section 14 so provides in general. It puts, however, no prohibition on the issue of notes payable not more than two years from date; but it makes effective practical provision that the issue of such short-time notes shall not be a means for evading the general prohibitions which are the prime purpose of the bill. It is essential to the carrying on of any business that the management should have the power to make temporary loans when the exigencies of the business so require. The safeguard against abuse of this essential right is that the management should know that when the time comes to pay off the temporary loans represented by short-time notes, the management, if it wishes to get the money to make that payment by the issue of stock or bonds, must justify the terms on which the temporary loan was made.

To illustrate: A railroad company issues short-time notes for \$100,000 at 90 per cent of their value. To raise \$90,000 it has issued \$100,000 notes, which must be paid off at par in, say, two years. As the end of the two years approaches, the company finds that to

pay the \$100,000 of notes, it must sell bonds. The Interstate Commerce Commission finds that the reasonable market value or selling price of the bonds is 92. It then inquires whether the notes "were issued by the corporation at the price received therefor (90 per cent) in good faith and after proper endeavors to obtain therefore their reasonable market or selling value." If the Commission finds that the notes were so issued, it says to the railroad company, "You may sell enough of your bonds at 92 to raise money to pay off at par the maturing short-time notes." If, however, the Commission finds that the notes were not issued at 90 per cent in good faith, and after proper endeavors to get their reasonable market selling value, but on the contrary could have been issued for 95 per cent, the Commission will say to the railroad company, "You ought to have sold those notes at 95 per cent instead of at 90 per cent; if you had sold them at 95 you would have had to sell only about \$94,700 of notes instead of \$100,000 of notes in order to get the \$90,000 which you received for the notes. Now we shall allow you to sell only enough bonds to raise \$94,700 and the remaining \$5,300 necessary to enable you to pay off the \$100,000 of notes you will have to provide out of your earnings, or in whatever way you can, but we do not intend to permit you to issue stock or bonds to do it."

But notes frequently can not be sold at all without collateral and the only collateral a railroad company may have to offer may be its own unissued bonds. The times may be such—and they frequently are such—that bonds of any except the very strongest companies are not saleable except at a ruinous discount. A sale of the bonds in such circumstances would defeat the main purpose of the bill, namely, the getting full value for the securities of the company. At such times short-time notes with ample collateral may be saleable at a comparatively moderate discount. In 1907 many railroad companies could sell their notes secured by their own bonds at a good price when their bonds were practically unsaleable. Such a transaction took the form of a sale of, say, \$5,000,000 of notes secured by the pledge, say, of \$10,000,000 of the companies' bonds, the intention being—and in many cases the intention has been already carried into effect—to sell the bonds, before the maturity of the notes, when the bond market offered a favorable opportunity. To facilitate such a sale, the notes and the agreement of pledge would provide for calling the notes before maturity or the withdrawal of the bonds from the pledge upon substituting cash or other securities.

Provision is made by one clause of section 13 that the bill shall not prevent the issue of such collateral notes provided the sale of the collateral is not authorized except on ample notice. The same clause allows such notes to provide for their conversion into the pledged bonds on terms which make it certain that the market value of the bonds will be received. It has been very common in the past to allow preferred stock to contain a provision for its conversion at the option of the holder into common stock. It would seem that this under the general scheme of the bill is unobjectionable if the amount of common stock to be received upon conversion is no greater than the preferred stock converted; in other words, if after the conversion the total amount of stock is no greater than before. It is very often necessary to have preferred stock because on account of its priority in respect of dividends over common stock it may be sold at par when

common stock can not. But in general, anything that tends toward making the stock all of one class would seem desirable. It prevents unfairness, or suspicions of unfairness, as between different classes of stockholders.

An important part of section 13 is the clause providing that nothing in the section shall invalidate any mortgage or pledge of stock or bonds as security for any loan heretofore made, or to prohibit the sale of any such mortgaged or pledged securities pursuant to the terms of the mortgage or pledge, etc.

If the proposed act were an act of any state legislative body, this provision would be, of course, unnecessary. It may be said it is unnecessary as it is. But it is obviously fair and in accord with the general principle on which Congress proceeds, regardless of what its power may be, of not invalidating existing contracts. The most common case covered by this clause is the case of an outstanding bond convertible by its terms into stock. Many of these bonds have passed from hand to hand in the market for years. The present owners have paid for them on the assumption that the contract of the railroad company to issue stock for the bond would be carried out. Some 4 per cent bonds are selling 10 points above par because they are convertible into stock. To invalidate such a provision in the bond would be to make a gift to the railroad at the expense of the bondholder.

Section 14 provides that in the case of the reorganization of a railroad corporation, incorporated prior to January 1, 1910, the properties of which shall be in the hands of receivers or subject to be sold in certain judicial proceedings, nothing in the act shall prevent the company used for the purposes of the reorganization, called the new company, from: (1) Issuing stock to the same amount as the old company had outstanding; (2) or from issuing bonds or other evidences of indebtedness to an amount not in excess of the new money paid into the new company and of the amount of bonds and other obligations and debts of the old company, including receiver's liabilities, provision for the payment of which or the delivery of new securities for which shall be made in the plan of reorganization; provided that the aggregate amount of interest charges agreed to be paid by the new company, or to which its property will be subject, shall not exceed the amount to which the old corporations were subject; (3) or from issuing stock in lieu of any bonds or other evidences of indebtedness which it might issue without violating the act; (4) or from assuming bonds or obligations of the old companies; (5) or from issuing stock or bonds or other evidences of indebtedness which it might issue consistently with the provisions of section 13.

This means that if, for example, a railroad corporation, incorporated before January 1, 1910, has \$5,000,000 bonds and \$5,000,000 stock outstanding, and it goes into the hands of a receiver, and the bondholders and the stockholders and bondholders appoint a committee to reorganize the property, and deposit their securities with such committee under a plan to reorganize the company through a sale under a decree of foreclosure and the formation of a new company to take over the property after such sale, and to issue securities to the security holders of the old company, and the plan provides for the raising of \$2,000,000 of fresh money to put the property on its feet, the act of Congress shall not prevent that new company from issuing

\$12,000,000 of securities, viz: \$5,000,000 or more of stock and \$7,000,000 or less of bonds, provided: (1) The total amount of stock and bonds shall not exceed the amount of the fresh money and the old securities; and (2) the total interest charges shall not exceed the total interest charges of the old company. In other words, the new or reorganized company will not, before issuing its securities on reorganization, have to get a certificate that the value of the property turned into it is equal to the par value of the stock and the market value of the bonds.

But the apparent exception to the general rule, which the act is intended to establish in regard to future issues of stocks and bonds, is nominal, not substantial. To call the company as reorganized a "new company" is technically correct, but in reality it is but the old company under a new form. The reorganization of a railroad company is for two purposes: One to cut down fixed interest charges; the other to raise fresh money, the raising of which may alone be sufficient to turn it from an unsuccessful to a successful enterprise. The bondholders and the stockholders ought to do, of their own accord in the way of giving up interest and putting in new money, what is necessary to meet the requirements of the company, and the large majority are nearly always willing to do so. But they can not be compelled to do what they ought to do voluntarily. A few bondholders refusing to waive their interest, a few stockholders refusing to pay an assessment, make a resort to the courts absolutely necessary. Suit is brought to foreclose the mortgage, a plan of reorganization is put out which invites all security holders to come in on equal terms, and provides that when the property is sold under judicial decree, it shall be bought in for the benefit of such bondholders, say, as are willing to accept stock in a new company for their bonds and such stockholders as are willing to pay an assessment to provide fresh money for the enterprise. The plan has to be fair to everybody or it will not be successful in getting the approval of enough of the security holders. Any bondholder who refuses to come into the plan will receive his percentage of the price bid for the property, just as if the bidder were an outside person instead of the representative of a large majority of the security holders.

Resort to courts is not always necessary, however. Some very large and important reorganizations, or, as they perhaps more accurately might be called, financial readjustments, have taken place through the voluntary action of the security holders of embarrassed companies. Let us suppose the case of a railroad company having \$5,000,000 of bonds and \$5,000,000 of stock outstanding. Let it be either a company that has built a railroad into a new country that has not developed as fast as was expected, or a company that has built a railroad to compete with a strong, well-established company, which, through bad management, has failed to get its legitimate share of the business. The security holders are confident that if interest charges can be reduced and fresh money, say \$2,000,000, be obtained with which to get additional equipment, to reduce grades, to get better facilities for doing business more economically, in a few years the company will be successful. Every bondholder agrees, say, to accept preferred stock for his bonds and every stockholder agrees to pay into the treasury of the company 4 per cent of the par value of his stock, accepting therefor bonds at par.

The company after this voluntary readjustment has been carried out instead of having as before \$5,000,000 bonds and \$5,000,000 stock has \$2,000,000 bonds, \$5,000,000 preferred stock, and \$5,000,000 common stock.

In other words, it has as much stock as it formerly had stock and bonds and in addition has bonds in amount equal to the new money paid into its treasury.

Everyone would regard this readjustment of the securities of the company as highly creditable to the company and its security holders and highly beneficial to the community served by the company, for with the \$2,000,000 of new money new cars and engines could be bought, improvements made, better service be given, and the fixed charges of the company would have been reduced from, say, 5 per cent on \$5,000,000 to 5 per cent on \$2,000,000.

Why should the same result if brought about through court proceedings not be equally creditable and beneficial?

The only reason there needs to be a foreclosure sale and a new company is that a few bondholders and stockholders of the old company, from honest doubt, perhaps, as to the wisdom of action the great majority of security holders consider beneficial, or perhaps from obstinacy or a desire to be bought off by the other security holders, refuse the bondholders to take stock for the bonds and the stockholders to pay an assessment in cash. Resort has then to be made to the court in order that those who are willing to give up some of their rights and to pay assessments may get the property and those who are not so willing may get what the court awards them as their share in cash of the property.

In the case I have just supposed of the readjustment by agreement if some of the security holders had not consented, what would have happened? Foreclosure of the mortgage securing the bonds would have taken place—the property would have been purchased at the foreclosure sale in behalf of the security holders who had formed a plan of reorganization, a new company would have been organized, that company would have received into its treasury \$2,000,000 in cash, and it would have issued for the \$2,000,000 cash \$2,000,000 of bonds, and in addition it would have issued \$5,000,000 preferred stock and \$5,000,000 common stock. All the bondholders who had come into the plan of reorganization would have received dollar for dollar in preferred stock and the old stockholders who had contributed the fresh money would have received bonds at par for the cash and dollar for dollar in stock. The securities which the bondholders who did not come into the plan would have received if they had assented would be disposed of to pay those nonassenting bondholders their cash dividend.

But the net result would be precisely what it would have been if there had been no foreclosure. The company owning the railroad would have the railroad and \$2,000,000 in money and there would be securities issued of \$2,000,000 bonds, \$5,000,000 preferred stock and \$5,000,000 common stock. In one case the company would be the same company as before; in the other it would be a new company. But if we look behind forms and consider the real persons in interest as the company, it would, though in name a new company, be in substance the old one.

The cases that will be covered by this nominal exception to the general rule will be few. They will be mostly cases of struggling roads built to compete with strongly entrenched roads. It may be that all that is needed to make them strong, vigorous competitors is a little more capital, which they can get only by reorganization. In some cases railroads will have built a little ahead of time into undeveloped country. But in a few years, with the relief a reorganization may bring from fixed interest charges and the new money it may enable the company to get with which to better its property, with a rapidly developing country helping the railroad and improved railroad facilities helping the country, the financial difficulties of the company may be at an end.

Section 14 also provides, among other things, that if two companies consolidate or merge, nothing in the act shall prevent the corporation formed by the consolidation from issuing as much stock as the constituent companies had. The Interstate Commerce Commission, in its report numbered 943, said: "It is in the interest of the public to facilitate the consolidation of connecting lines." It may be difficult to get stockholders whose stock is selling for less than par to accept stock of less nominal value in a consolidated company, and, if this were required, a consolidation advantageous to the public might be prevented. If one company has \$1,000,000 of stock selling for less than par and another company has \$5,000,000 selling for less than par, it is difficult to see any harm in a company resulting from the consolidation.

AFTERNOON SESSION.

The committee met at 3.15 o'clock p. m., Hon. Frederick C. Stevens (acting chairman) presiding.

STATEMENT OF MR. HENRY C. BARLOW, TRAFFIC DIRECTOR OF THE CHICAGO ASSOCIATION OF COMMERCE.

Mr. BARLOW. Mr. Chairman and gentlemen, I have not come in contact with the question of the uniformity of bills of lading law. It has been handled by the legislative committee of the National Industrial Traffic League in conjunction with the gentlemen who have appeared before you. However, representing the shippers, while I am not prepared to discuss any of the legal phases of it, we want to ask you, if it is possible for the Congress to do so, to surround the bill of lading with a greater element of security, that it may increase its collateral value. One of the principal banks in Chicago writes me:

I think it is unnecessary to go into details of the importance of this legislation. As you are probably aware, at the present time a great many of the banks have refused to consider bills of lading as collateral, and this action, as you will understand, is a great hardship on the business man, and quite a restriction to business generally.

That is signed by the assistant manager of the Corn Exchange National Bank.

If I recall aright, in the early history of railroading, when I was a boy, the bill of lading was considered a document on which it was considered safe to loan or advance money. The bill of lading, gentlemen, is the financial backing of the small dealer. Without it he

can not do business. It enters into enormous transactions, amounting to hundreds of millions of dollars, and all I can say and all I want to say from the shipper's point of view, is that the uncertainty now surrounding these transactions is detrimental to the successful conduct of business in many localities, particularly where the capital of the business man is limited and he must realize a financial benefit, or he must realize money, immediately from each transaction.

Last night I was called into the meeting with the representatives of the eastern roads and the gentlemen who have appeared and will appear before you. My particular interest in the matter, aside from those which I have incidentally stated, was that a bill of lading should be a working document, and therefore some suggestions were made last night on that line, and they will appear and do appear in the suggestions offered to Mr. Stevens, who introduced the bill, as the result of the conference last night.

Mr. STEVENS. Mr. Barlow, you have had a great deal of experience on both ends of this proposition, the railroad end of it and the shippers' end of it, have you not?

Mr. BARLOW. Yes, sir.

Mr. STEVENS. We would like to know if it is a practice at all common in the competition for business between railroad companies to sort of wink at a practice of agents at competitive points to issue bills either when the property is not fully received or when it is not received at all?

Mr. BARLOW. That was quite the practice when I was in the railroad service.

Mr. STEVENS. Has that continued, do you know?

Mr. BARLOW. That I can not answer, but it was quite customary when I was in the railroad service for a shipper to telephone down "I am loading a car now, and it is so and so; give me the bill of lading so that I can get it in bank," and perhaps the car would not be in the actual possession of the carrier for a day or two.

Mr. STEVENS. Does that practice still exist?

Mr. BARLOW. I presume it would, because the element of competition has been so greatly minimized between carriers from what it was in past years that I would assume that that courtesy would be granted at extreme competitive points. Now I personally feel that that is something that ought to be done away with. It is not a proper transaction.

Mr. STEVENS. Which is the greater danger, this element of accommodation to help out in getting business at competitive points, or the bare fraud of the agent and the shipper putting up a job and issuing an entirely fictitious bill? Which is the larger class of cases, do you know?

Mr. BARLOW. Why, the former; the accommodation feature of it is the one that was largely used when I was in the business.

Mr. STEVENS. And that is the thing that is desired to be eliminated?

Mr. BARLOW. I think so; one of the things, because the desire of accommodation leads to fraud.

Mr. STEVENS. And that is what makes the uncertainty that you have described?

Mr. BARLOW. Yes, sir.

Mr. STEVENS. Now, supposing that this committee or Congress in its wisdom shall determine not to pass any such legislation as this,

and the uncertainty continues that you describe, and some of the banks decline to use these bills of lading as collateral, what will happen when the crop-moving season comes?

Mr. BARLOW. It will certainly restrict the operations of all small dealers.

Mr. STEVENS. In what way?

Mr. BARLOW. The small dealer can not get money to conduct his business. Many men are restricted in their financial responsibility to the purchase, if you please, of two or three carloads of grain. They must realize either on warehouse certificates or bills of lading in order to keep their capital sufficient to conduct their business.

Mr. STEVENS. And they could not get credit at their banks or use those bills as collateral; after they had expended their capital they could not buy any more until after they got it back?

Mr. BARLOW. No, sir; it would retard the conduct of that man's business until he could hear from final sales. He may sell his grain in New England, and it may be 15 or 20 days before he can get returns on it.

Mr. STEVENS. And what would be the effect in the section wherever he buys grain or other products?

Mr. BARLOW. It would compel the remaining of the products in the hands of the producer, or else eliminate the small dealer as a business element and confine the conduct of the business to those men who had greater capital.

Mr. STEVENS. So that it would eliminate the small men to some extent and decrease competition to some extent?

Mr. BARLOW. Yes; that must be the inevitable result. Speaking from a practical point of view, of one question raised this morning, that is, as to the responsibility of the carrier as to the contents of a package, from my experience as a traffic man, and so forth, he would have to connect the law with the contract of shipment, the bill of lading. This is a bill of lading recommended and indorsed and adopted by the action of the Interstate Commerce Commission. Its terms and conditions are quite general throughout the entire United States. I happen to have a copy here. This is headed "Boston and Maine Railroad. Order Bill of Lading; Original." Above that it is headed "Standard for order bill of lading approved by the Interstate Commerce Commission by order No. 787 of June 27, 1908." Then below, it says:

"Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading at ———, 190—, from ———, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown)."

You will notice that this is in triplicate.

Mr. STEVENS. Well, now, right on that point I will read you the provision of the proposed act and amendments as now submitted. On page 3, section 4, occur the words "before the whole of the property as described therein," referring to the bill of lading; and the amendment contains the following language, "who has given value in good faith, relying on the description therein of the property." And again, referring to another place still further, "its failure to correspond with the description thereof in the bill at the time of its issue."

That word, "description," applies to the property as a basis for damages if there is a failure to correspond with the actual property, and as defining the liability of the carrier as to the bill of lading. That word "description" is used three times. I notice that in this blank order form that you have, in the middle of the page, appear these words, "Description of articles and special marks."

Mr. BARLOW. Yes.

Mr. STEVENS. What reference has this line, "Description of articles and special marks," to the word "description," as applied in this bill?

Mr. BARLOW. May I answer that in my own way?

Mr. STEVENS. Certainly; answer it your own way.

Mr. BARLOW. Because I can not give a legal statement about it.

Mr. STEVENS. Answer it in your own way.

Mr. BARLOW. I went over this very carefully yesterday, and as I interpreted section 4 it did make the carrier responsible, as originally drawn, for the damages; that is, so far as he was "estopped, as against the consignee and every other person who shall acquire any such bill of lading in good faith and for value, to deny the receipt of the property." I made several suggestions as to modifications. My idea was this, and I do not know how it was finally incorporated, that where a shipper desired that the carrier should be responsible for the contents of the packages, he would require an inspector to come and know that a shipment contained 100 barrels of sugar and not 100 barrels containing sand; and if the carrier issued a bill of lading with the knowledge of the contents, that carrier would be responsible for it.

Mr. STEVENS. Then what would appear on this bill of lading down under those words "Description of articles and special marks?" How would you describe that on 100 barrels of sugar, supposing that it had not been inspected?

Mr. BARLOW. As 100 barrels of sugar; and then I should strike out from the bill of lading the words "contents and condition of contents of packages unknown," and ask the shipper to execute it that way. He might decline to do it. If he did, I would be governed by the terms of the contract.

Mr. STEVENS. But if the inspection had not been made and the agent did not know whether those barrels contained sugar or sand, what would be the language in the bill of lading under those words "Description of articles and special marks?"

Mr. BARLOW. What follows above would hold, namely, "contents and condition of contents of packages unknown." The description of the articles is merely incidental to the transaction, that the carrier may know how to apply the proper rate—that is what it is there for—and deliver what is said to be a certain consignment.

Mr. STEVENS. So that so long as that appears, "Contents and condition of contents of packages unknown," you think that the shipper would be protected as to the quality of what was actually contained in the packages?

Mr. BARLOW. No, I think not. I think that would be a matter of proof. If you have the bare declaration on the part of the shipper that he has really shipped 100 barrels of sugar and it gets to the destination and proves to be 100 barrels of salt, that would then be a question of proof, as to whether the shipper really did put sugar

in the barrels or not, as against a statement of that kind. If the carrier did not actually check the packages so as to know that it was actually sugar, then under the suggestions I made last night he would be estopped from denying that he did receive sugar.

Mr. STEVENS. Now, would not a question arise as to the quality of the sugar, whether it was the highest-priced granulated sugar, or the lowest-priced, unrefined black sugar?

Mr. BARLOW. Yes, sir; that always arises in a controversy over every loss. The paragraph in the bill of lading reads:

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation whether or not such loss or damage occurs from negligence.

Mr. STEVENS. Do you think there is anything in these amendments that you looked over last night that would interfere with that provision suggested?

Mr. BARLOW. It ought not to; I hope it would not.

Mr. STEVENS. That is what I would like to know. It ought not to, but do you think it does?

Mr. BARLOW. No; I thought it did not.

Mr. KENNEDY. You were reading from a bill of lading blank?

Mr. BARLOW. Yes; from the standard bill of lading approved by the Interstate Commerce Commission.

Mr. KENNEDY. You do not understand that the common carrier can limit its liability by agreement?

Mr. BARLOW. This bill of lading provides for that.

Mr. KENNEDY. It could not do that.

Mr. BARLOW. If the law is otherwise, it will have to be otherwise.

Mr. KENNEDY. He would have to pay what it was worth if they could prove it, even if that language was in.

Mr. STEVENS. Is there anything further?

Mr. BARLOW. No, sir.

STATEMENT OF MR. HARRY DOWIE, REPRESENTING THE NATIONAL POULTRY, BUTTER, AND EGG ASSOCIATION.

Mr. WANGER. Whom do you represent?

Mr. DOWIE. I represent the National Poultry, Butter, and Egg Association. Gentlemen, we represent a product that is perhaps more greatly interested in the bill of lading than any other product, not only because of the value being larger, probably, than that of any other product, taking butter, eggs, and poultry combined, but because it is a perishable product. It is subject to a sight draft. The draft and the bill of lading arrive from two to four or five days before the goods arrive. We have met with such competition existing from certain points with the agents of the railroads that there are a great many impositions and frauds which have been perpetrated on the consignee.

Mr. TOWNSEND. There is not much competition in the egg market now, is there?

Mr. DOWIE. Yes, sir.

Mr. TOWNSEND. Is there?

Mr. DOWIE. Quite a little. As far as fraud that is perpetrated upon railroads by misrepresenting goods in this bill of lading is concerned, in no case have we ever asked the railroad company to pay that cost. It is only ten days ago that we placed one shipper in state's prison for fraud. We go at the perpetrator, not at the railroad company. All we expect from the railroad company in issuing a bill of lading is to give us the number of packages, of whatever it may be, butter or poultry or eggs, contained in that car. That is all we expect the railroad company to do. As for the quality of these articles, we do not hold them. As to the condition on arrival, we do hold them. Individually, I can cite you a few cases that have occurred to us direct. There are only a few of them. To shortage of A. R. T. car 394, billed from Defiance, Ohio, November 30, 1907, billed 125 cases of eggs and 60 barrels of poultry. 125 cases of eggs arrived in New York in car A. R. T. 394; shortage, 60 barrels of poultry.

To shortage on A. R. T. car 2378, billed from Defiance, Ohio, November 3, 1907, 125 cases of eggs and 72 barrels of poultry; neither eggs nor poultry arrived.

Shortage on car 11,614, M. D. T., billed from Pembroke, 265 cases of eggs; arrived in New York April 3, 1907, 126 cases of eggs short.

Mr. ADAMSON. I wish you would tell us as you go along what was the matter that they were short; why they did not arrive.

Mr. DOWIE. I could not answer that. They were not received.

Mr. TOWNSEND. They were in the bill of lading?

Mr. DOWIE. They were in the bill of lading, properly issued.

Mr. ADAMSON. Did you look it up?

Mr. DOWIE. Yes; we traced it up, and we found to our satisfaction as far as those shipments from Defiance were concerned that there was collusion between the shipper and the agent. We notified the head of the Wabash Railroad at Chicago to that effect, and he sent an agent there to investigate it. The Wabash Railroad in answer to us, when we asked them for the amount of the value of this shortage, said that it was our business to know whether it was in the car or not before we paid the bill of lading.

Mr. ADAMSON. You did not try the experiment of putting those fellows in jail who were in collusion, who defrauded you?

Mr. DOWIE. We are working at that now. Also the railroad company has issued, or did issue, to a party who is doing an immense business in Chicago, bills of lading without putting the car numbers on. These cars might consist of various qualities of eggs, for instance, or different qualities of butter, and no one could trace the cars. If a car did not arrive we could not trace it because we did not have the number of it. We lost a lot of money that way.

Another trouble is caused by the agents giving a shipper who does a large business a car number, and they fill the bill of lading out with so many packages of whatever it may be, and in many cases it would be twenty days before the goods would arrive, and tracing it back it showed plainly that the product was not produced at the time that the bill of lading was issued. Consequently the party who was the consignee refused to pay the bill of lading until the goods arrived. These drafts kept coming and kept coming and kept coming, and the bank in New York, which was the agent of the bank in the west, had

some \$20,000 to \$40,000 of drafts and bills of lading. The goods did not arrive, and they have not arrived yet. The bank in the west has paid the money, not the consignee in the east, who was sharp enough to stop; but the bank in the west has paid the money. It is some of these things that we ask for protection on. We do not ask the railroad to guarantee us the quality. All we ask is that on the bill of lading that is signed by the railroad company the car shall contain the number of packages that the bill of lading represents.

Mr. ADAMSON. The chief trouble with you seems to be that they sometimes issue bills of lading ostensibly for freight that they have not received.

Mr. DOWIE. That is right.

Mr. ADAMSON. It looks like the only place it needs patching, if it needs it there, is that as to third persons the carrier shall be bound by the statements in that bill of lading.

Mr. DOWIE. You see, in our line of business there are continually little shippers springing up all over, everywhere.

Mr. ADAMSON. Have these instances that you narrated there been of frequent occurrence in the last twelve months?

Mr. DOWIE. Not so frequent as they were before, but there have been some within the last twelve months.

Mr. ADAMSON. You do not know how many in the last twelve months?

Mr. DOWIE. Personally, we have not had any in the last twelve months. These cases that I cited to you are individual matters, not hearsay matters. There are a good many others that are hearsay matters that I can tell you, but these are individual matters that I personally know of.

Mr. ADAMSON. If the carriers are ordinarily not liable for the rascality of an agent in general, in the usual course of their business, and where they have not authority they are not liable, if the law was construed so as to make the railroads bound by the representations of their representatives, it would do away with the trouble, would it not?

Mr. DOWIE. Yes; largely.

Mr. ADAMSON. Then I suppose you would like to have it fixed so that in the hands of a transferee that bill of lading would be good?

Mr. DOWIE. We want the bill of lading issued by the railroad company to be issued by the railroad company knowing that the products that that bill of lading represents are in that car, when the bill of lading is issued.

Mr. ADAMSON. After the original shipper transfers the bill of lading to a bank you do not want it open to inquiry as to whether they did or not?

Mr. DOWIE. Yes; that is right.

Mr. STEVENS. That is the question we asked about just before the adjournment, and that has been discussed, as to what right we had to create that obligation or liability.

Mr. ADAMSON. Yes; but this witness has not been here before, has he?

Mr. STEVENS. No.

Mr. DOWIE. No.

Mr. ADAMSON. I was just trying to find out what he wanted. As to whether we could give it to him or not is another question. He may already have it. Sometimes a man has more than he uses.

**STATEMENT OF MR. G. J. H. WOODBURY, SECRETARY OF THE
NATIONAL ASSOCIATION OF COTTON MANUFACTURERS.**

Mr. WOODBURY. Mr. Chairman and gentlemen, I am secretary of the National Association of Cotton Manufacturers, which is an organization which was founded in 1854, and which numbers over 1,000 men in executive positions in cotton manufacturing and its tributary industries, including textile machinery, etc. These industries are to the amount of \$790,000,000, which these people represent. They employ a great many people—perhaps 2,000,000 or over.

This bill has been very carefully considered by the board of government of this association, and I was authorized and instructed to come here and ask for its enactment substantially as laid out, as giving greater facilities for the transaction of their business. The cotton business is a very large one, to be sure, but a majority of the American cotton is exported—about five-eighths of the American cotton crop is exported—and we believe that the cotton manufacture in this country should be encouraged in every way, because as long as a single bale of American cotton is exported so long will there be room for more American spindles. As to the details of the bill, the board of government did not care to urge anything in the line of the criminal penalties upon subordinates of railroads, believing it to be entirely a civil matter; and furthermore, as their representative I cordially acquiesce in the various amendments which have been noted upon some copies of this bill. These manufacturers, of course, are great patrons of the transportation companies, both as to the raw material of which they are vendees, and as to the finished product, of which they are vendors; and they believe that this measure would add a great deal to the facility of their business by placing it upon a sounder basis by giving a more responsible kind of bill of lading.

Mr. TOWNSEND. Will you not tell me just what you think this amended bill will do?

Mr. WOODBURY. I think that the amended bill will give a greater security to the responsibility that stands behind a bill of lading. The manufacturers have to borrow money, of course, on the matter of the raw material. The credit of a bill of lading as collateral as it stands now is very small. It really depends upon the credit of the borrower. If the bill of lading was so framed, as it is in this bill, that the credit of the railroad as a corporation should stand behind it more directly, it would be used as collateral security.

Mr. ADAMSON. Is it the only question of doubt there, whether the railroad really receives that cotton or not?

Mr. WOODBURY. That is it. There are a great many questions of dispute especially in the line of cotton, after the bills of lading are put in.

Mr. ADAMSON. If the bank felt sure that the railroad really received the cotton for which it issued the bill of lading, you would have no trouble in using those bills of lading as collateral in getting the money?

Mr. WOODBURY. In getting the money, yes, sir; using those as collateral.

Mr. ADAMSON. Does not the railroad sometimes surrender the bill of lading before the cotton is turned over? Does it have any trouble there?

Mr. WOODBURY. Not on the straight bill of lading. As a matter of fact, the transaction of business is suffering from a great many difficulties in the transit of goods. It is alleged that these bills of lading do not really represent the actual receipt of goods by the railroads at the time.

Mr. ADAMSON. And your remedy is to secure a paper that will bind the carrier to every statement contained in it?

Mr. WOODBURY. Yes.

Mr. ADAMSON. You want us to pass a bill so that when they issue a receipt through one of their agents they shall be bound by it; if it can be done indirectly, it can be done directly.

Mr. WANGER. Is there anything further?

Mr. WOODBURY. No, sir.

Mr. NEVILLE. These are all the witnesses that we have to make statements except that something might be developed by the other side as they go on, and we would like the privilege of replying to any statements they make.

Mr. STEVENS. The chairman asked, and I also made the suggestion, that we receive some argument or statement from you showing how far you think Congress has the right to create an obligation in the hands of a third party.

Mr. NEVILLE. Mr. Chairman, I can not do any more than simply refer to volume 2 of your hearings of 1908 on House bill 14934.

Mr. TOWNSEND. You refer to Mr. Taft's statement?

Mr. NEVILLE. Yes, sir; Mr. Taft's statement.

Mr. TOWNSEND. I would like to have that put in.

Mr. NEVILLE. I refer to Mr. Taft's personal appearance before you gentlemen in these hearings, and likewise to the briefs which he filed. His statement begins on page 18 of the hearings, under date of Friday, April 24, 1908. Mr. Taft's personal statement will be found there, and we have also Mr. Taft's opinion here. It is here in this report of those hearings on House bill 14934, but if you wish it we will put it in here.

(The document referred to will be found appended to this hearing.)

Mr. WANGER. Are there any other persons here who desire to be heard in favor of the bill? If not, are there any persons who desire to be heard in opposition to the bill?

Mr. FAULKNER. We have a few gentlemen here. I believe Mr. Cunningham will open the argument.

STATEMENT OF MR. HENRY C. CUNNINGHAM, REPRESENTING THE CENTRAL OF GEORGIA RAILWAY COMPANY.

Mr. CUNNINGHAM. I represent, Mr. Chairman and gentlemen of the committee, a railroad which does a large cotton business, perhaps the largest east of the Mississippi River. We have some familiarity with the matters before the committee, and we wish to call particular attention to one fact, and that is that no fraud is committed by a railroad agent excepting through collusion either of the agent of the party who pays the money or the man with whom he is in commercial relations. The agents of these railroads are men of integrity; they are usually men of some ability. They are not mere figureheads, but they are like a great many men who live throughout

the country where we live—they are not accustomed to the ways and manners of men from the cities, and men come there and bring to bear upon those persons influences which lead to their fall, to the carrying out of frauds in which the agent does not get one single solitary dollar. There is not a case that I have ever heard of where an agent personally benefited from one of these frauds. The frauds are carried on invariably, almost, by the machinations and by the inducements of these men who go to these small towns throughout the South. Take the case in Bellton which has been mentioned. We do not know whether the man there was a shipper in commercial relations with Mr. Neville or whether he was his agent; he does not mention the fact that that fraud could never have been committed on him unless that agent, unless that man whom he trusted down there, was the person who put the thing into operation.

Now, why should the railroad companies be saddled with all these troubles? The gentlemen come in to-day and say, "We do not want any penalties put upon anybody; cut out all the penalties." Why, Mr. Chairman, I want penalties put on, and I want such penalties put on this matter that if agents do wrong they shall be punished, and that the man who connives with the agent and procures the bill of lading and puts it in issue shall be punished as well. I am astonished that gentlemen should come here with a proposition of striking out from this bill that punishment for wrongdoing by the agent of the railroad company and the agent of the party who gets the bill of lading. That is not the way to deter people from doing these things. What has stopped in this country within the last few years the rebating systems which formerly prevailed over all the railroads in this country? Why, the shadow of the penitentiary hanging over the traffic managers is what has stopped it; and the same thing will stop this practice of the agents and persons who are buying the property throughout the South and West, and shipping it. If the shadow of the penitentiary hangs over them, they will stop that business. That is the plain, simple fact of this matter. Take the position taken by these gentlemen here in reference to this particular bill. Individual losses, they say, fall on the banker because the commercial capital man is exhausted. The commercial capital man is the man that stands down there and induces the agent of the railroad to give him a false bill of lading which he puts up as collateral and gets the money and puts it in his pocket or pays his debts with it, and does not send goods to the consignee. That is the man who is exhausted. Why should the railroad companies be put in a position to protect the banker? We have no contract with the banker. We have made a contract with a man who pretends to have cotton there. Now, he sends off his bill of lading and the banker is fooled; he does not get what he supposes he will get, and he comes back and says, "Put it all on the railroad company; put everything on the railroad company."

MR. TOWNSEND. May I ask you whether your railroad company issues bills of lading through its agents except where the property is delivered?

MR. CUNNINGHAM. I never in my life heard of an accommodation bill of lading; never in my life in my territory.

MR. TOWNSEND. You mean that your agents are not in the habit of issuing bills of lading for goods that have not yet been received?

Mr. CUNNINGHAM. I say that is not the habit. Yes; certainly, there have been cases where men have given bills of lading where goods have not been received.

Mr. TOWNSEND. Is it not quite general that that is done?

Mr. CUNNINGHAM. No, sir; I think it is quite unusual that it is done.

Mr. TOWNSEND. What is the rule of the company?

Mr. CUNNINGHAM. The rule of the company is absolutely that they shall not do it.

Mr. TOWNSEND. What do you do with one of your agents if you learn that he has issued a bill of lading in that way?

Mr. CUNNINGHAM. We fire that man as quick as we can get rid of him; and we have fired them. There is one case I will mention, that of Harrington, at Newnan, Ga. Harrington was the biggest man in Newnan, and he went to the man who was running the compress there, and by a deliberate system of fraud he got that man so mixed up in his accounts that at the end of the season he was 1,000 bales of cotton short. He did not know it and could not account for it. Harrington connived with that man. He would give him bills of lading and send him down receipts and then take the receipts down to his office and duplicate them and put them in again, and at the end of the season that man was 1,000 bales of cotton short.

Mr. ADAMSON. Harrington bought cotton all over that country.

Mr. CUNNINGHAM. Yes, and brought it to the compress at Newnan, which was a compress place.

Mr. ADAMSON. That was a good many years ago, was it not?

Mr. CUNNINGHAM. Yes, that was a good many years ago; I do not remember many cases of this kind, and I have been connected with the railroad for many years and have had charge of the general litigation in relation to these matters. There was a case in Birmingham. Hubble Brothers & Co., of New England, lost some cotton by the rascality of the man at the compress there. That man was named Solon Jacobs, and he was discharged, absolutely, and my opinion is that he was prosecuted for it. We do not let them stay in our employ if we can help it. It would be suicidal to do it. I do not know the circumstances surrounding Mr. Neville's case at Bellton, except what he chooses to tell us. The railroad paid the money, finally, to Mr. Neville, so that he is not out anything for that.

Mr. ADAMSON. When you fire a man do you not also prosecute him, if he has violated the criminal law?

Mr. CUNNINGHAM. We do, absolutely go for him; and we have sometimes small bonds that these people give, and we collect the bonds if there is any way to collect them.

Mr. ADAMSON. One trouble I have had about this legislation, Mr. Cunningham. I think I have never heard in all the hearings of a case that could not be punished criminally under the state jurisdiction.

Mr. CUNNINGHAM. I do not see any reason; when a man commits a fraud upon another he certainly can be punished for it in Georgia and Alabama.

Mr. ADAMSON. And he can be in Tennessee.

Mr. CUNNINGHAM. Yes. Those are the three states through which our road runs. There is no question but they can be prosecuted for these things; but they do not prosecute them but very seldom.

What does this whole record amount to before your Honors? A few individual cases brought up here; and for what purpose? For the purpose of bolstering up the attempt of the bankers of the United States to have better security for their commercial transactions..

Mr. STEVENS. Have you been here and listened to this testimony?

Mr. CUNNINGHAM. Yes, sir.

Mr. STEVENS. You have got a totally different idea from what I have; I want to state that to you.

Mr. CUNNINGHAM. I say that in proportion to the number of cases that occur on the railroads this is almost infinitesimal.

Mr. STEVENS. Let me put a point to you that some of us have entertained and see what you have to say about it. Casting the bankers aside, as I confess I have some doubt as to how far they have any rights or we can give them any rights, what should you say to this proposition? Where a shipper in your country induces a railway agent to give a bill of lading for property only a part of or none of which has been received and that shipper takes that bill of lading and puts it through the bank with a sight draft attached in the usual way you have described here and sends it to a man with whom he has been accustomed to do business at a distant point, and secures the cash on what your agent has done, ought you to pay for what your agent has done? That is the point. The bank has not anything to do with it.

Mr. CUNNINGHAM. I do not think under the law we ought to do it. I do not think there is any doubt about one fact, and I do not object to that, that this committee or Congress should pass an act which should guard and protect people in that as much as they can; but whether they can attach to an act which they pass a provision making it absolutely impossible for the railroad company to show any of the circumstances surrounding the shipment, is a different matter. If the man, for instance, was an agent of the party to whom the shipment was made, he would be in *pari delicto* with him, and we could not even show that under the bill brought in here. That is exactly the position I take about it.

Mr. ADAMSON. As between the original parties you would have your defense.

Mr. CUNNINGHAM. But when it came to the other parties we would be absolutely helpless.

Mr. STEVENS. We are not discussing the rights of the third party here at all. What we want to know is what would be your duty to the apparent consignee of those goods under that bill, who had paid the sight draft attached to the bill of lading which you had given?

Mr. CUNNINGHAM. It seems to me our duty would be absolutely exactly what it would be to the party who was supposed to have brought the stuff there and did not bring the stuff there, and who took the bill and perpetrated a fraud.

Mr. STEVENS. You do not believe that you should be responsible?

Mr. CUNNINGHAM. No, sir; I do not believe we should be responsible; not in that case.

Mr. STEVENS. You have heard the arguments of these gentlemen as to why a railroad should be responsible. What have you to say about that, as to the injury to the course of business?

Mr. CUNNINGHAM. I think that the business has gone on for a great many years without any particular injury to it. The business certainly has grown almost beyond anybody's imagination in the last twenty-five years; and why now it should be necessary to throw this safeguard around it is something I do not understand. I think that the amount of loss that has occurred to people has been very small in comparison with the immense amount of business that has been done; and your honors are changing the whole course of the fundamental doctrine of agency here. Here is an agent who is not put there for the purpose of giving bills of lading when he does not receive the goods; who has no authority to do it; not only has he not any authority, but his agency does not extend to it, and the man who deals with him knows that it does not.

Mr. ADAMSON. Of course the profits of a bank in the course of the business amount to something, but as I understand it the party to be chiefly benefited by this legislation is the man in business who wants to use the bill of lading to aid his credit and secure more money. That being true, and the objection being that the bank is uncertain about the verity of the statements in the bill of lading, do you not think that the shipper, the person who wants to use that bill of lading as a means of credit, should take a little pains to see that it is all right?

Mr. CUNNINGHAM. I think it is his duty to do it.

Mr. ADAMSON. Have you ever known of his being prosecuted or put in jail for participating in the fraud?

Mr. CUNNINGHAM. Never; and I do not know that he does participate in it.

Mr. RICHARDSON. Suppose that a shipper conspired with one of your agents and perpetrated a fraud outside of the province of his employment, and the bill of lading was issued accordingly calling for 100 bales of cotton when there were not that many bales delivered. This bill undertakes, as I understand it, to give the same commercial sanctity and character and standing to the bill of lading that a bill of exchange or commercial paper would have with the bank. Would you have any right in a court where you were sued upon that bill to show any infirmities in that bill of lading, such as that your agent fraudulently conspired with the shipper? Is not the rule of law applicable to all commercial paper, that its infirmities can not be availed of in a court of law? You would be precluded and cut off entirely.

Mr. CUNNINGHAM. We are estopped from showing anything.

Mr. RICHARDSON. You would have no opportunity to show that that man conspired with the shipper for the purpose of defrauding the common carrier, and you would have no opportunity under the rule of law to show that such an infirmity existed in the bill of lading, because they propose here to make a bill of lading just as sacred and just as invincible as commercial paper. That is the purport of this bill.

Mr. CUNNINGHAM. Could we even show that where there was 150 barrels of sugar shipped, it turned out to be salt? We could not show that it was sand. We could be absolutely precluded from doing it, because here is the third party who comes in, the party that holds the bill of lading, and says "I am the assignee; I have got a negotiable instrument," and you can not show anything.

Mr. STEVENS. You do not seem to understand what some of us are trying to drive at. We do not care anything about the rights of the third party. We do not want to make a bill of lading a negotiable instrument, and we do not intend to. You do not seem to strike the point. Mr. Barlow, a man of great experience, has just testified before us—and I confess I have great confidence in what he tells us—that you are protected under this law and under this bill of lading so that you can show what the condition of those goods is if damages are claimed against you. Now, he claims that that is the fact; that you can show it. You say you can not.

Mr. CUNNINGHAM. You mean under this new act?

Mr. STEVENS. Yes.

Mr. CUNNINGHAM. With this bill of lading?

Mr. STEVENS. Yes. He claims you *can* show it.

Mr. CUNNINGHAM. Here is the statute of the United States which prescribes a certain line of conduct for a common carrier. Here is a paper which a common carrier chooses to issue, and calls it a bill of lading, and it contains a contract. If there is anything in that contract contrary to the act of Congress, it is absolutely null and void.

Mr. STEVENS. But you have not read that part of the statute. What is in it that prohibits?

Mr. CUNNINGHAM. That prohibits?

Mr. STEVENS. That prohibits you from showing the contents of those packages; or what defense would you have in case the consignee claimed damages for a fictitious bill of lading?

Mr. TOWNSEND. In other words, what is antagonistic to the bill of lading? You say that the bill of lading provides one thing, and the statute another.

Mr. STEVENS. Show us in the proposed statute what it is.

Mr. CUNNINGHAM. As I understand this statute as proposed, section 4 is as follows:

SEC. 4. That every carrier who himself, or by his officer, agent, or servant authorized to issue bills of lading, shall issue an order bill of lading or a straight bill of lading, as defined by this act, before the whole of the property as described therein shall have been actually received and is at the time under the actual control of such carrier to be transported, or who shall issue a second or duplicate order bill of lading or straight bill of lading for the same property, in whole or in part, for which a former bill of lading has been issued and remains outstanding and uncanceled, without prominently marking across the face of the same the word "Duplicate," shall be estopped, as against the consignee and every other person who shall acquire any such bill of lading in good faith and for value, to deny the receipt of the property as described therein.

Now, the property as described in the bill of lading. What is the description of the property? One hundred and forty-eight or 150 barrels of sugar. That is the description in the bill of lading, and it is bound to be a description of the property. How can he refer back to my bill of lading and say, "Here is the contract you made with me?" "Yes, you did make that contract with me, but the contract must be read in the light of the congressional legislation in reference to it." I do not think there can be any doubt about that.

Mr. RICHARDSON. What you have just read says that all these things must not be done. Suppose the agent ignores all of that and fails to get the property, and then issues a bill of lading; what defense have you against that?

Mr. CUNNINGHAM. I have got no defense.

Mr. RICHARDSON. None on earth.

Mr. CUNNINGHAM. It says in the first section :

Nothing herein shall be construed to prohibit the insertion in an order bill of lading of other terms or conditions not inconsistent with the provisions of this act or otherwise contrary to law or public policy.

That follows as a matter of course, whether it was in there or not. You could not put it in the bill of lading. That description of the property is absolutely what is written in there in ink by the people who are shipping the goods, or by the agent, one or the other. It seems to me that this bill does absolutely put upon the railroad companies a burden which they ought not to have. They have got burdens enough. There has been legislation enough about them, and they are burdened now until it is almost impossible to keep up with the law of the common carrier as it is administered.

Take a case in Georgia, for instance, where I am more familiar than anywhere else. An agent ships cotton, 100 bales of cotton, and gives a receipt for it, and it goes into court. Judge Adamson will tell you that that bill of lading is *prima facie* evidence of the facts contained therein; and in our State when a case gets to a jury and the railroad is on the other side it is mighty apt to be decided against the railroad; and the agent may get up there and say, "I did not get that cotton," and that jury will consider every circumstance surrounding that, and if it shows negligence on the part of the railroad company in any particular, they will have to pay the bill; and the supreme court will confirm it, because it was done by a jury. That is the legislation in our State. In Alabama the law is different. In Alabama there is a statute in reference to the question; and it is a matter which can be enforced very speedily.

Mr. ADAMSON. I suppose it is the universal law, and always has been, that the receipt is only *prima facie* evidence.

Mr. CUNNINGHAM. That is all.

Mr. ADAMSON. The upshot of this whole proposition is to change that law.

Mr. CUNNINGHAM. That is all.

Mr. ADAMSON. And to make your receipt absolutely good and binding in the hands of a third party; that is the way I understand it.

Mr. CUNNINGHAM. The first thing the railroad does in this cotton business is this: A man at a point like Newnan, Ga., or any other place in the State, concentrates cotton at that point by buying it from various stations in that neighborhood, 10 bales from one station and 20 from another and 15 from another, and so on. He sends it in to the railroad agent at that particular station and gets the railroad's receipt for it. That receipt is certainly, according to our law, only a receipt, and it is liable to be explained if there is anything wrong about it. That cotton is then carried to the compress, the compress taking up these railroad receipts and giving a receipt which the man sends to his bank and the bank holds those receipts until the man is ready to ship out 100 or 200 bales of cotton. They give what is called a pink ticket. Then the shipper goes to the carrier with all these receipts that he has got in his hand, he carries them to the railroad company and they give him a bill of lading. It is done this way sometimes. The railroad gives a bill of lading and the man who has got the pink ticket goes off with the proceeds of his bill of

lading; and that is the way this fraud is consummated. It seems to me there is enough legislation now to accomplish all the protection that the producer or anyone else is entitled to in this business.

Mr. TOWNSEND. As I understand, there are not many cases now?

Mr. CUNNINGHAM. I do not know of many. You can see how few there have been in the courts.

Mr. TOWNSEND. So that even in your view of it, there could not be any very great injustice on the railroad or on the shipper either one?

Mr. CUNNINGHAM. No, sir.

Mr. TOWNSEND. I have been very much interested in your statement in answer to the questions that were asked you as to whether there would be any conflict between the provision of the proposed bill and the bill of lading. The bill provides in reference to the description of the property as you have read. Your bill of lading would describe or might describe it not only as 100 barrels of sugar, but they might say "100 barrels of sugar, contents unknown."

Mr. CUNNINGHAM. Yes, sir.

Mr. TOWNSEND. You do not imagine that with such a description in the bill of lading the railroad company could be held for 100 barrels of sugar, if it was shipped as 100 barrels of sugar, with contents unknown?

Mr. CUNNINGHAM. No, sir; I do not think they could be.

Mr. TOWNSEND. No.

Mr. CUNNINGHAM. I do not think even under this bill, stringent as it is, that is if it be as it is here, they could be held. If the negotiability, say, was struck out—well, I think you are perfectly right about it.

Mr. RICHARDSON. According to this, it does not seem that you can deny the receipt of the property as described in the bill of lading.

Mr. CUNNINGHAM. I think Mr. Townsend's question was this. We have the property, the contents of which is unknown, and we deliver that property, and that would be a good performance under the bill of lading.

Mr. RICHARDSON. Suppose they bring proof against you that it was not sugar?

Mr. CUNNINGHAM. Yes.

Mr. RICHARDSON. How can you deny it, under this bill?

Mr. CUNNINGHAM. I am afraid I could not.

Mr. RICHARDSON. You could not.

Mr. ADAMSON. Taking your statement that where you are engaged in contests in court the railroad generally loses the case——

Mr. CUNNINGHAM. We sometimes win cases, Judge.

Mr. ADAMSON. But recognizing that in most cases that is right, I want to ask you if it would not be better, and if it would not behoove the railroad and the shipper, to be a little careful about the facts at the time, to see that the goods were delivered and accepted, and that the bank should be a little careful about taking those bills of lading as securities, instead of coming to Congress to change the laws?

Mr. CUNNINGHAM. Of course the banks are in New York, and they could not come down there and look into each particular shipment.

Mr. ADAMSON. They examine your paper and mine mighty close, before they put their money on it.

Mr. CUNNINGHAM. That is true; but usually when they are dealing with a man who is a merchant they are supposed to deal with him because they think he is honest. I suppose their opinion is that he is honest to begin with, or they would not deal with him at all.

Mr. ADAMSON. They want two or three signers on a man's paper, and they are mighty careful about it. If they would exercise one-fourth as much care and effort in the matter of these bills of lading as they do in the discounting of an ordinary note, there would not be any trouble.

Mr. CUNNINGHAM. There is no reason why they could not say "We will send down to the railroad company ourselves and get the bill of lading," but that would not be pleasant to the man with whom they are dealing, and they do not do it.

Now, they put in here that we shall not write on the bill that it is not negotiable. I do not know what they meant by that. I suppose by legislating that you shall not write that on there, that makes it a negotiable instrument.

The trouble originally arose, it seems to me, with the banks, from what I recollect of the history of it; those order bills of lading were sometimes marked by the railroads "nonnegotiable," and of course that somewhat affected the negotiability of the bills of lading, and the banks were rather chary of taking them with those words on them, which I think was proper.

Mr. ADAMSON. I would like to find some way to compel the railroads to make a bill of lading for what they receive, and state what they receive, but it looks like a mighty long way to pull them over the coals and put them in the banking business, to accomplish that.

Mr. RICHARDSON. It seems to me that the great trouble about this bill that is here now, is that it is applying the ironclad rule to bills of lading which applies properly to bills of exchange and other commercial papers; that you can not apply strictly. On account of the many transactions that come up on a bill of lading, and the great railroad business, you can not make the same application to a bill of lading that you can to a bill of exchange or commercial paper, to the case where two men sit down and draw a note payable in bank.

You can not do that; you can not give the bill of lading the same sanctity. With commercial paper, its infirmities can not be looked into. You can not look into the question there of a man's security; his name is there and he has got to stand responsible. A bill of lading differs from that kind of security, it is totally different, and in the nature of things it does not seem to me the same rule can apply. I do not see any reason why, with due regard to the great commerce of the country, and promoting the advantage of the shippers, as well as of the common carriers, alike, a bill of lading should be held so sacred and be so absolutely acceptable without any complaint or any plea being made as to its infirmity. In other words, it strikes me that in the case of a common carrier, a railroad, whose agent enters into a conspiracy against his employer with the shipper, no rule of justice or propriety or law ought to make the common carrier responsible.

Mr. CUNNINGHAM. There is one consideration that strikes me also in reference to this matter. You propose to make this bill negotiable?

Mr. RICHARDSON. Yes.

Mr. CUNNINGHAM. So far as relates to the railroad company. That is, the railroad company has got to come in and stand responsible?

Mr. RICHARDSON. Yes.

Mr. CUNNINGHAM. Do you propose to make it negotiable as between the parties?

Mr. STEVENS. But supposing the third party—that is, the banker—took only the same rights that the consignee had.

Mr. CUNNINGHAM. Yes.

Mr. STEVENS. Yet you would have the same objection to the enactment of this law if the question of negotiability was stricken out and the additional rights or equities in third parties were stricken out?

Mr. CUNNINGHAM. Yes, I think that the law is too drastic.

Mr. STEVENS. The point you object to is the estoppel on the railroad company?

Mr. CUNNINGHAM. From ever inquiring into the consideration, as it were, of the contract.

Mr. STEVENS. The estoppel to inquire into the original transaction?

Mr. CUNNINGHAM. Yes.

Mr. STEVENS. Now, can you not protect yourself? The showing is made to this committee that at the crop-moving period it tends to move the crops easier and cheaper and better by furnishing an adequate supply of credit or money, or whatever it may be, to move the crops, if these bills of lading be exactly what they purport to be, because then the bills of lading can furnish money to move these crops. Now, if that be a matter of good public policy, and it does help to move the crops and move them easier and cheaper and quicker, can not you railroads protect yourselves easier than the consignees can protect themselves, as a matter of public policy; and if it is a matter of public policy that somebody should suffer, is not the man who can protect himself the easiest the one to bear the burden, rather than the one who finds it more difficult to bear?

Mr. CUNNINGHAM. Now, how can we protect ourselves?

Mr. STEVENS. By selecting agents who are worthy of confidence.

Mr. CUNNINGHAM. Of course it would be a very great thing if we could always get agents who did business properly.

Mr. STEVENS. You heard what Mr. Barlow stated, that the great evil was not fraudulent bills of lading, but accommodation bills of lading?

Mr. CUNNINGHAM. Yes; I understood him to say that.

Mr. STEVENS. That is your fault?

Mr. CUNNINGHAM. Yes; that of course is the fault of the agent of the railroad company who does that, every time.

Mr. STEVENS. Under such circumstances are you not the ones to cure the evil, and not the consignee?

Mr. CUNNINGHAM. Do you suppose we could get, on the face of the earth, men who were absolutely above suspicion or above being led into these things?

Mr. STEVENS. No.

Mr. CUNNINGHAM. We can not get them.

Mr. STEVENS. But, on the other hand, where the great volume of commerce needs these bills of lading to be utilized in order to still further move the great volume of commerce, can you not place

about your transactions a safety that will assist this instead of disregarding this need?

Mr. CUNNINGHAM. I think we ought to do it. I think there is no question about that.

Mr. STEVENS. Will not this bill compel you to do it?

Mr. CUNNINGHAM. I do not know whether it will or not. I do not see how we can do it.

Mr. RICHARDSON. Is it not a fact that under existing law the consignee is protected, ordinarily?

Mr. CUNNINGHAM. I think he is ordinarily protected, and we contend that the immense volume of commerce that is moved under bills of lading to-day, under order bills of lading and under straight bills of lading, shows that there is no necessity for the legislation asked for. Commerce is moved all over this country. There is no trouble in getting money to move the cotton crop when it comes on; not a particle of trouble. And if the banks in New York and the banks at the North did not do it, what would be the consequence? The consequence would be that the banks in the South would have to do it, and they would grow, and the banks in the West would grow, and it would not be all concentrated in New York.

Mr. RICHARDSON. Has it not been developed in the last two or three years that a great deal of the money that is being or has been used in the last few years in the shipment of the cotton crop in the South has been gotten there at home?

Mr. CUNNINGHAM. Of course, a great deal of it. We have a great number of banks, more than we ever had before.

Mr. TOWNSEND. Now you say you think this is a movement on the part of the banks. Has there not been a great deal of agitation of this question on the part of the shippers, and have not the shippers all over this country been holding meeting after meeting, trying to get together on a uniform bill of lading?

Mr. CUNNINGHAM. On a uniform bill of lading, yes; and we have done it.

Mr. TOWNSEND. And have not these people from all over the country been discussing this question for several years, and has it not been a live question?

Mr. CUNNINGHAM. Yes; and we have the standard bill of lading, that bill of lading that was approved by the Interstate Commerce Commission, which seems to be perfectly satisfactory.

Mr. TOWNSEND. I asked that because I thought you had been contending that it was not a matter of great importance.

Mr. CUNNINGHAM. Yes; but the question of negotiability and the question as to our agents was not in either of these bills of lading, nor was it in the discussions had on these bills of lading. I was here in Washington when they were discussed before the Interstate Commerce Commission.

Mr. RICHARDSON. What is the mileage of your system?

Mr. CUNNINGHAM. About 1,900 miles.

Mr. RICHARDSON. How many instances of false bills of lading, that have been given out by any of the agents on your road, have there been in the last five years?

Mr. CUNNINGHAM. I really do not recall but two.

Mr. RICHARDSON. Two?

Mr. CUNNINGHAM. Two; yes.

Mr. RICHARDSON. Then your idea is that there is no occasion for such drastic legislation as this?

Mr. CUNNINGHAM. Exactly; I do not think we ought to have such legislation.

Mr. STEVENS. But it would not hurt you any? You make that statement?

Mr. CUNNINGHAM. That is a question, whether it would hurt us to-day. It might hurt us to-morrow. I will tell you one thing I do think. If you eliminate from this bill, as is proposed by the gentlemen who have propounded it or have pretended to propound it, the punishment against agents and against parties who connive with the agents, I would not be surprised if we would have a good deal of trouble down there.

Mr. ADAMSON. The imposition of regulations by law, the fixing of regulations by law, to operate by operation of law upon you, is one thing, and compelling you to sign contracts in a particular form is quite another?

Mr. CUNNINGHAM. I have not undertaken to discuss the question of the power of the committee. There are other gentlemen who will discuss that.

I think it is a very great stretch of the power over commerce between the States to regulate the relations between the parties who are engaged in that commerce. I think it is a very different matter.

Mr. STEVENS. Congress can regulate the practices of people who are engaged in that commerce while they are engaged in it; there is no doubt about that.

Mr. CUNNINGHAM. I think perhaps you can prescribe a bill of lading which we would be bound to carry out; but I think it is a great stretch of power to do it.

Mr. STEVENS. We can prescribe how goods shall be carried, how received, and how conveyed, and how delivered, can we not, in interstate commerce?

Mr. CUNNINGHAM. Yes, I think so.

Mr. STEVENS. And if a bill of lading is necessary to do that, we have the right to do it in that way?

Mr. CUNNINGHAM. Perhaps so.

Mr. TOWNSEND. Would this bill compel you to issue a negotiable bill of lading; or require that when you do issue one, if you pretend to issue a negotiable bill, it shall be such, if it so states on its face, practically?

Mr. CUNNINGHAM. Could we decline to issue an order bill of lading? Could a common carrier decline to do it under the existing conditions in this country?

Mr. TOWNSEND. We do not compel you to do it.

Mr. CUNNINGHAM. No, you do not; but does not the law compel us to do it? We are bound.

Mr. TOWNSEND. Unless the business exigencies compel you to do it there is nothing in the law to compel you to do it. I am quite with you in your proposition that there should be a penalty on the shipper who receives a bill under such a representation and the agent who issues such a bill, and I am not in sympathy with striking that out; but if you do something, even through an agent, upon which an ordinary business transaction is based, you know that those transac-

tions are being carried on to the extent of millions of dollars in the United States?

Mr. CUNNINGHAM. Yes.

Mr. TOWNSEND. It seems to me that that bill of lading ought to be protected in what it represents to be; that is the way it strikes me; although I agree with you that you should have some recourse if a man in your employ disobeys your orders.

Mr. CUNNINGHAM. The legislation which already exists seems to me to give those people protection. It does not give them the absolute protection that it would give them under your changed bill of lading; I admit that; but why should this matter be changed?

Mr. TOWNSEND. Under your statement I do not see the necessity of it, because you say there are not many cases.

Mr. CUNNINGHAM. I do not think they can bring many cases up here. I do not believe there are many cases on any of the railroads, and I certainly do not believe there are any of these bills of lading being issued in the last year or two in the way of accommodation bills of lading issued to people. What would it be? It would be the barest fraud on the law in the world. It would be a rebate of the worst kind, and it would not be the fellows below who would be giving them, but it would be the big men, who would go to the penitentiary, because they would not give these bills of lading for the purpose of influencing traffic except through traffic managers and men of that character.

STATEMENT OF MR. E. B. PIERCE, GENERAL SOLICITOR OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY.

Mr. PIERCE. I represent a railroad that has a mileage of some 8,000 miles, extending from the Lakes on the north to the Gulf on the south, and as far west as Denver, Colo. We are in a large grain country, a large cotton country, and perhaps handle as great a variety of products as any railroad system in the United States. We are opposed to this bill on principle. We think it is fundamentally wrong. We are willing to assume all obligations and burdens, even severe obligations and burdens, with respect to the property that actually comes into our possession and is handled by us, but we do seriously object to assuming responsibilities for property that does not reach our hands. Coming directly, as I see it, to the meat of the proposition that is now pending before you, in my opinion there is a direct conflict between the act which you have under consideration and the provisions of the present uniform bill of lading. If there is no conflict, then this bill does not give to the gentlemen who propound it the protection and the relief that they ask, and it will be of absolutely no use to them. If we could show that 100 barrels said to contain sugar in fact contained sand, why could we not go further and show that those 100 barrels said to contain sugar did not contain anything? And if we could make that showing as a defense in any action that might be brought against us under such a bill of lading, then of course the holder of the bill of lading, whether he might be a banker or a consignee or any third party, would have no relief against us, and he would find himself exactly in the attitude that he occupies to-day. That is not what they want. What they want is a document which, when it comes into their possession, shall be abso-

lute security against any loss. They do not want to have any doubt about whether they will be absolutely protected by this bill of lading. Now, I say, if this conflict does not exist then this bill does not afford them the relief they seek. I say that if under this act we should undertake to insert a clause to the effect that the contents was unknown, they would object to it. They would insist that under this act we would have to describe—

Mr. TOWNSEND. You would at least have to ship 100 barrels.

Mr. RICHARDSON. Of something.

Mr. PIERCE. We would have to ship 100 barrels of something, yes, sir. That brings me right to the point. Now, if the barrels were said to contain sugar, it must be sugar, because this act prohibits us from issuing a bill of lading until the whole of the shipment described in the bill of lading has been delivered to the railroad company. If in point of fact this was said to be 100 barrels of sugar and it turned out to be 100 barrels of sand, we would have violated the act, would we not? So that we would violate this act in issuing a receipt for 100 barrels of sugar that did not as a matter of fact contain 100 barrels of sugar.

Mr. TOWNSEND. Have there been any complaints, to your knowledge, where the goods shipped were different from those described? Has it not always been the case that the goods were not shipped at all, that the packages were not delivered? There was either a bill of lading calling for 100 on which 50 were delivered, or none? Is not that the trouble; it is not a question of the quality of the goods but the question of the goods themselves—the package?

Mr. PIERCE. Whether there was none shipped at all or not?

Mr. TOWNSEND. Yes.

Mr. PIERCE. I will not undertake to say, because I do not know to what extent that has been true on our road or any other road. Personally I know of very few cases where our agents have issued bills of lading for shipments that have not been delivered to us. I have seen some cases in the last few years where shippers would deliver to us, boxed up, a shipment described as a certain article, and in the course of transportation that article would become damaged in some way, and when it was unpacked, instead of having a claim presented to us for the article said to be in the box, we would have presented to us a claim for some more valuable commodity. That has occurred, possibly, through false billing, in order to get a less rate than the rate on the true article. But to what extent agents have issued bills of lading for articles that have not been delivered to us, I am not able to say. But it is the principle of the bill that I am arguing against, and that leads me to make this observation in this connection, that if you eliminate from this bill the penalties against the agent and against the shipper who procures a bill of lading, in this case you will undoubtedly flood not only the Rock Island Railroad Company but all the other railroad companies of this country with thousands and thousands of dollars of these claims, claims of this character; because there are a great number of people around over the country who are trying to perpetrate frauds, and if no penalty is attached to this against the agent or the shipper or against any other party, then I think we will probably be confronted with some serious claims of this kind. But I say that the principle of the bill is wrong.

Now, there is not anything about this bill that is necessary, so far as the transportation of the actual article is concerned. There is not any act or regulation of the railroad that is complained of. The proposition is that they want some way to get credit. They say, "We want some way to carry on our business that we are not able financially to carry on. We want you to supply that credit." As Mr. Cunningham said, these bills of lading are never issued except by the procurement of some man. Our agents do not run out over the country seeking people to deliver bills of lading to, without some reason. It is by the procurement of some person who is weak financially or who has some fraudulent purpose in view that these bills are issued. If that be true, answering the question as to the public policy which was propounded just now, should the railroad company stand a burden of that kind, or should the banker or the consignee stand it? We have no dealings with that shipper; we have no dealings with the banker; we do not undertake to say to a consignee, for instance, in Chicago, that a man that he is dealing with in Topeka, Kans., is a reliable man. We do not undertake to give him a rating as to that man. That is his business. If a commission merchant in Chicago wants to do business with a man in Topeka, why should he not investigate the record of that man?

Mr. BARTLETT. You say that the agents you employ on your road are ordinarily honest men who would not aid anyone to perpetrate a fraud?

Mr. PIERCE. Yes; but the question was put just now, assuming that there has been a collusion between the agent and the consignor, that the agent has acted fraudulently and the consignor has acted fraudulently with that agent, as a matter of public policy, should the railroad suffer or should the consignee or the banker suffer? That is the proposition I am addressing myself to.

Mr. BARTLETT. I beg your pardon.

Mr. PIERCE. And I say in that case the railroad should not be called on to suffer, because a man has no business dealing with another man where it involves the receiving of money before he receives a quid pro quo unless he has investigated the responsibility of that man, and the purpose of this bill is to say to the railroad company, "You must be responsible for the financial character, for the moral character, for the business character, and, in fact, for the good faith of the man that I am dealing with." You must remember, gentlemen, that the railroad company has got to conduct its business——

Mr. STEVENS. Is not the question, or is it, that you must be responsible for the good faith of your own receipts given in the due course of business?

Mr. PIERCE. Given in the due course of business. I take issue with you upon that proposition.

Mr. ADAMSON. Is it within the ordinary scope of the business and duties of your agent to issue a receipt for something that he has not received?

Mr. PIERCE. No, sir; on the contrary, we have outstanding the most positive instructions that no agent shall deliver a bill of lading until the property is in his possession. It is beyond his scope of authority to do so. It is beyond his business. I am here arguing to you that we refuse to lend our credit to the business of people along our line in any such way as this. We have got to conduct our business through

the hands of thousands of people. I believe it has been stated that the Rock Island Railroad has 75,000 employees. Now just consider the immense commerce that is carried on in all this western country, and suppose that these 75,000 employees of the Rock Island Railroad Company were empowered to go out and lend the credit of the company to the transactions of the business, not of itself, but of all the vast throng of people that it comes in contact with; what would be the end? What would be the result? The result would be that the railroad company would be bankrupted. The result would be that it would be so crippled financially that it could not carry on its duties; it would violate its duty to the shippers who desired to do business with it in a legitimate and honest way, and it would impose upon the stockholders of that company, and the bondholders, a burden which they should not be called upon to meet. Therefore, as a matter of policy and as a matter of interest our agents are absolutely restricted from assuming any authority to use or exercise the credit of the company except as it may be necessary in carrying on the necessary business of the company in its due course.

Mr. STEVENS. As I understood, you have 75,000 employees who have a right to issue receipts for goods and bills of lading?

Mr. PIERCE. No, sir. I said that the Rock Island Railroad had 75,000 employees of all kinds.

Mr. STEVENS. Yes.

Mr. PIERCE. It has not 75,000 agents who issue bills of lading. But if the principle that we have involved in this bill was extended to our station agents, where by reason of some act committed by them beyond the scope of their authority they imposed a liability upon the company, then some other people that we come in contact with, tomorrow, in a different line of business, might say that the company should be responsible for some act of these agents outside of their line of duty, and the result in the aggregate would be, perhaps, that all these 75,000 agents would be doing things, beyond their scope of duty, which would amount to liabilities upon the railroad company.

Mr. STEVENS. We have not gone that far yet.

Mr. PIERCE. No, we have not got that far; but that is illustrative.

Mr. STEVENS. You have about 1,000 or 1,500 agents?

Mr. PIERCE. Yes.

Mr. STEVENS. We are dealing with them. The right to issue a bill of lading or receipt for goods received would affect about 1,000 or 1,500 agents?

Mr. PIERCE. Yes.

Mr. TOWNSEND. No one deals with them but in a restricted sense. You authorize those 1,500 men to issue bills of lading?

Mr. PIERCE. For goods received.

Mr. TOWNSEND. For goods received?

Mr. PIERCE. Yes, and in our hands.

Mr. TOWNSEND. You think you ought not to be responsible for those men if they fail in their instructions and do issue bills of lading when the goods are not in your hands?

Mr. PIERCE. No, sir; I do not. I think it is just as easy for the people who expect to derive the financial profit from this transaction to protect themselves. It is easier for them to protect themselves than it is for us. Now, take the cotton business, for instance. A

cotton buyer goes into a small town and buys to-day, say, 100 bales of cotton. He delivers those 100 bales of cotton to the agent, and gets his bill of lading. He takes the bill of lading to the bank in that town and the bank cashes it so as to give him the money to go out on the street the next day and buy another 100 bales of cotton. It is just as easy for the banker in that town to verify the statement as to whether that cotton is actually in our possession or not as it is for him to find out, for instance, that a note that is presented to him as collateral security is good.

Mr. STEVENS. Who can verify it easiest, the banker or the agent?

Mr. PIERCE. The banker can do it just as easily.

Mr. STEVENS. As easily as the agent?

Mr. PIERCE. Yes.

Mr. STEVENS. It is in the possession of the agent and in his place of business, is it not?

Mr. PIERCE. Yes.

Mr. STEVENS. Could he not verify it easier than the dealer, 1,000 miles away, or even half a mile away?

Mr. PIERCE. I will come to that proposition. These bills of lading that are wanted in this case—and the only relief that they want is on bills of lading—are used for the purpose of drawing money right in the town where they are issued. When they are attached to drafts and sent away a long distance for collection, and it is intended that the consignee should pay the draft before he comes into possession of the property, it is not necessary for him to pay that draft until the goods arrive.

Mr. STEVENS. Suppose he did not, and that was the course of business; how would that affect it until the goods arrived?

Mr. PIERCE. Then if he did not pay the draft until the goods arrived, he could determine absolutely. If the goods did not arrive, he would not pay the draft. When the goods arrive he knows, as a matter of fact, whether the goods have been placed in the hands of the railroad company.

Mr. STEVENS. If that course of business should be made the rule throughout the country during the crop-moving period, how would that affect the movement of cotton and grain, of corn, wheat, and other products?

Mr. PIERCE. I do not think that is the course of business. I think the course of business is this, that where an order bill of lading is used, the money is obtained through the bank at the shipping point. The reason of that is to get the money immediately, so as to go on the street the next day and buy more cotton or buy more grain, and it is very seldom that the draft goes through to destination for collection. That occurs sometimes, but I say in that case it is not necessary, and it will not affect the course of commerce for the man to wait until the arrival of those goods before he pays that draft.

Mr. STEVENS. Supposing that be true, and that the consignee at the final destination refuses to pay until the goods arrive. That puts the burden on the local bank?

Mr. PIERCE. The local bank has no burden. There has been no money advanced.

Mr. STEVENS. But the local bank has got to advance the money, you say, for that man to continue his business.

Mr. PIERCE. Then the local bank has an opportunity to find out, back at the local point, whether the property has been actually delivered to the railroad company, and in that case it is absolutely assuming no risk, because if the property actually comes into the possession of the railroad company there is no question about the liability.

Mr. STEVENS. But the local bank gets this money by forwarding the bill of lading with draft attached to the consignee, who pays upon presentation. Now supposing that the consignee says he will not pay until the goods arrive; how is the local bank to get the money, and if it does not get the money how can it advance more money to the man to buy more cotton with?

Mr. PIERCE. If the local bank takes the draft and is going to forward it for collection, it is a very easy matter for the local bank to say it has ascertained that that cotton has been delivered at destination. They have got to transmit the draft. It is put into the bank at the local point and the bank at the local point, if there is any question about whether the bank at the destination is going to pay the draft because the cotton has not been delivered, can very easily determine at the station of the company the fact on that point, and transmit the information to the bank at destination.

Mr. KENNEDY. Who could give that information so that it could be of any use at the local point, the agent?

Mr. PIERCE. They could see the property itself; the cotton would be there.

Mr. KENNEDY. But if the agent is in collusion with somebody he may point out some other person's cotton.

Mr. PIERCE. That might be true.

Mr. BARTLETT. But the bill of lading not only states the number of bales, but the marks on the cotton.

Mr. PIERCE. Yes; it is easy to describe the cotton. Replying to that question, and replying to it as fairly as I know how, I do not imagine you could get up any kind of business transaction where there was not more or less honor attached to it; you have got to take somebody's word about something everywhere, in almost any kind of a transaction.

Mr. KENNEDY. Yes; but the common carriers carrying goods for the public, it would seem to be pretty responsible work to receipt for and receive goods, and make contracts for the carrying of them, and so on; that is all done by your agents?

Mr. PIERCE. Yes.

Mr. KENNEDY. You can not have a vice-principal representing the road there?

Mr. PIERCE. No, sir.

Mr. KENNEDY. As a matter of fact, ought not a freight agent to be a vice-principal having those powers and duties?

Mr. PIERCE. Well, he is a vice principal to the extent that the railroad company actually comes in contact with the shipper or the consignee in the capacity of a carrier; but the question here involved is whether a railroad company should assume responsibility in favor of a consignor or the consignee, or a banker, in respect to property that never reaches its possession. In other words, if this agent issues a bill of lading for property that never came to its possession, just so long as that bill of lading stays in the hands of the man who obtained it, no

liability exists, because he knows that he did not deliver anything to the railroad company, and he can not collect from the railroad company the value of something that he never delivered to the railroad company. Now the question is, when he transfers that bill of lading to a banker or some other consignee, knowing that it does not represent property, and when he is responsible as much as anybody else for the fraudulent procurement of that bill of lading, whether there should be imposed upon the railroad company in such a case a responsibility in respect to property that has never come into its possession? That is the question that is involved here.

Mr. TOWNSEND. Have you had many cases of violation of your strict order against giving bills of lading for goods that were never received?

Mr. PIERCE. As I said in the beginning, I do not personally know whether we have or not. If we have had many, they have not come to my personal attention. I do remember, however, a few. I will state, however, that we have had a good deal of trouble at the other end of the line; that is, we have had a great many shipments delivered before taking up the bill of lading, and that is due to the course of these bills of lading when they are put into the bank. For instance, to give you an illustration, one time we had a loss of \$50,000 between Eldorado, Ark., and Little Rock, Ark., on some cotton where our agent delivered it before the bills of lading were taken up, and that was due to the fact that the bills of lading were put into the local bank. The local bank probably sent those drafts to New Orleans, and the New Orleans bank probably sent them to St. Louis, and the St. Louis bank probably sent them back to Little Rock, and in the meantime the bales of cotton had arrived at destination, and the agent, knowing the person who was to receive them, took the responsibility of turning over the cotton, and afterwards the drafts were never taken up, and we of course had to be responsible to the bank. We have had considerable trouble of that kind.

Mr. ADAMSON. You never denied your liability there?

Mr. PIERCE. We never denied the liability. For instance, take a grain failure the other day at Little Rock. The banks have a habit of taking these bills of lading and carrying them for months. We do not know where they are. They attach them to drafts, and then when the drafts arrive at the bank, instead of the consignee going to the bank and taking the money to take up the bills of lading, or taking other forms of security there so as to get the bills of lading, he merely executes his note for the amount of the drafts, and attaches our bills of lading to that as collateral security, the note due in thirty, sixty, or ninety days from date, and then the consignee goes down to our agent and he says: "Here is this grain, and it is spoiling," or something of that kind, "and the bill of lading is not here. You give me the grain and I will get the bill of lading;" and he gets the grain while the bill of lading is really up at the bank attached to a ninety-day note. The banks take these bills of lading and keep them in that way; and just the last part of last year we paid the banks of Little Rock, Ark., \$204,000 at one pop on a proposition of that kind.

(At this point the chairman of the committee, Mr. Mann, entered the room and assumed the chair.)

The CHAIRMAN. You would be saved from that difficulty, then, if you were never to deliver the property until the bills of lading were presented?

Mr. PIERCE. In that case the cotton actually came into our possession and we wrongfully delivered it, and it does not take any act to make us responsible under those circumstances.

The CHAIRMAN. You did not contest your liability there; but there have been cases where the railroad did contest the liability. Do you think it would be perfectly fair to require the railroad company not to deliver the property until the order bill of lading is produced to the company?

Mr. PIERCE. That was in our form of contract. We had used this very form of bill of lading that is prescribed by the Interstate Commerce Commission, agreeing that we would not deliver that cotton until the bill of lading was taken up; but as I say, in this case our agent violated the instructions.

The CHAIRMAN. The uniform bill of lading is not an act of Congress.

Mr. PIERCE. No, sir; it is not an act of Congress, but it is just as binding a contract as an act of Congress would be, and the only difference would have been that an act of Congress being passed, it might prohibit us from making any other sort of a contract; but in this case we had made the contract. We had accepted it.

The CHAIRMAN. On whom is it binding?

Mr. PIERCE. It is binding on the railroad.

The CHAIRMAN. At the suit of whom?

Mr. PIERCE. At the suit of the holder of the bill of lading.

The CHAIRMAN. Is it?

Mr. PIERCE. Yes.

The CHAIRMAN. Is it binding at the suit of the holder of the bill of lading?

Mr. PIERCE. It would not be on a straight bill of lading where the cotton had been delivered to the man denominated in the bill of lading, but this happened to be an order bill of lading, a bill of lading stating on its face that the cotton would not be delivered until the bill of lading was surrendered.

The CHAIRMAN. Is the uniform bill of lading now a negotiable instrument?

Mr. PIERCE. Yes, sir. That is, it is not for all purposes a negotiable instrument. It has some of the features of a negotiable instrument.

The CHAIRMAN. Can the bank that happens to hold it bring a suit on the bill of lading?

Mr. PIERCE. Yes; they have done it.

The CHAIRMAN. They may have done it, but—

Mr. PIERCE. They have sustained it.

The CHAIRMAN. Is that the law?

Mr. PIERCE. Yes; that is the law.

The CHAIRMAN. It has been stated here, at some of the hearings, that that was not the law.

Mr. PIERCE. Well, of course I do not know what views other gentlemen may entertain, but I had a case not long ago where we were sued by a bank for this \$75,000 worth of cotton that I have just told you about at Eldorado, and I contested it all along the line, and we took it to the Supreme Court of the United States, and I know that I got licked, and we had to pay that \$75,000.

Mr. TOWNSEND. That was based on your contract?

Mr. PIERCE. Based on the contract.

The CHAIRMAN. If that is the case, you would have no objection, so far as that part of this bill is concerned, to that being enacted into statutory law?

Mr. PIERCE. We have already entered into a contract to that effect. The order bills of lading that we make have that provision in them.

The CHAIRMAN. I understand; but if that is the case, if you assume that liability, what objection have you to a statutory enactment?

Mr. PIERCE. I have not any.

The CHAIRMAN. Providing that you shall be liable if you deliver property on an order bill of lading without the delivery of the bill?

Mr. PIERCE. I have not any objection. I think that is not only a proper provision, but it is protection, perhaps, to the railroad companies, where there is a criminal feature to it that helps us as against agents and persons who are trying to procure violations by our agents of the terms of the contract. We have not any objection to becoming responsible for the mistransfer of property or the wrong delivery of property that has actually come into our possession. But that is not the question that is engaging the attention of the committee to-day.

The CHAIRMAN. Yes, that is one of the questions. When this matter was first brought before the committee, several years ago, the principal argument that was made in reference to the bill at that time was that under the law the railroad company was not responsible to the banker holding a bill of lading, where the railroad company had delivered the property without taking up a bill of lading.

Mr. PIERCE. I do not agree with that view as to the shipper's order bill of lading. I do not think that that was the law, if it was a shipper's order bill of lading. If it was a straight bill of lading, the law is different.

The CHAIRMAN. That was before the new bills of lading were agreed upon or used.

Mr. PIERCE. Yes.

The CHAIRMAN. Still, it was after the order bill of lading was in constant use?

Mr. PIERCE. We have always had in use a form of an order bill of lading; and just on that proposition Mr. Townsend stated a while ago that this law did not propose to make us issue an order bill of lading, but it simply purported to make us liable in case an order bill of lading was issued. Now, whether the railroad companies are under legal obligation to issue an order bill of lading, I do not know. That has always been a question about which I thought there was some room for debate; but just the other day at Kansas City Judge Phillips did issue a mandamus against the railroads, compelling them to accept shipments of liquor from Kansas City to Oklahoma on shipper's order bills of lading, and his view was that railroad companies were under existing law under obligations to issue order bills of lading. Whether that decision is a sound one or not I have some question in my own mind. I have always thought that we were not under obligation to do it.

The CHAIRMAN. Is that under the new act of Congress that took effect the 1st of January?

Mr. PIERCE. Yes; we have had a great deal of trouble in Oklahoma on account of the prohibition laws. There has been a great deal of liquor seized, and it was decided by our company, as well as others, as a matter of policy, that we would conform as far as possible to the

wishes of the Oklahoma authorities with respect to the administration of their local liquor laws, and we decided not to issue order bills of lading for liquor, and some liquor houses at Kansas City procured a writ of mandamus from the court at Kansas City compelling the railroads to accept shipments and issue order bills of lading.

Mr. RICHARDSON. I understand from your views that you have expressed, that the real objection that you have got to this bill is that it holds you, as a common carrier, responsible for goods described by the bill of lading that never came into your possession as a common carrier?

Mr. PIERCE. Yes.

Mr. RICHARDSON. And it goes still further than that and gives the bill of lading the character of negotiability that prevents you from going into a court?

Mr. PIERCE. Yes.

Mr. RICHARDSON. And showing that you never got that property?

Mr. PIERCE. Yes.

Mr. RICHARDSON. And prevents you from showing that that agent acted fraudulently as to his duties toward the common carrier; that he acted out of the line of business, and that he conspired with the shipper on the outside and perpetrated a fraud on you?

Mr. PIERCE. Yes.

Mr. RICHARDSON. You think that this bill keeps you from showing that?

Mr. PIERCE. If it does not do that, then these gentlemen who have propounded the bill are not getting what they want. Gentlemen, I have taken more time than I intended to take, and I do not know whether I have said anything that has helped you or enlightened you in the consideration of this matter.

Mr. BARTLETT. Take the case of cotton; that is the most frequent shipment from my part of the country. A man sends a man into the country to buy cotton, and he buys cotton and goes into the local bank to get money and that bank discounts his draft?

Mr. PIERCE. That is my understanding of the proposition.

Mr. BARTLETT. The shipment is forwarded to the consignee of the cotton, but the bill of lading becomes the property of the bank as security for the discount?

Mr. PIERCE. Yes.

Mr. BARTLETT. Then what is to prevent the local bank, when it is dealing with a cotton buyer who is buying cotton daily and shipping it daily, from requiring that cotton buyer not only to secure the bank by the bill of lading as collateral security, but to put up sufficient security to cover any loss that may occur?

Mr. PIERCE. There is not anything to prevent that.

Mr. BARTLETT. Would not sound banking principles require that that bank should do so?

Mr. PIERCE. I should say so. As I have said, the proposition of this bill is to in effect require this very additional collateral that you speak of in the nature of making the railroad responsible for something that never came into its possession.

Mr. BARTLETT. Leaving out the question of loss by failure to deliver or by delivery to the wrong person of goods actually received, have not most of the losses come to the local banks by reason of discounts of drafts which were drawn upon the consignee and which

the consignee did not pay, so that the local bank was responsible? Has not that been the case?

Mr. PIERCE. Yes; I think that has been the case.

Mr. BARTLETT. Has not that been the main trouble; not that the consignee had to pay a draft and was not reimbursed and did not get the property, but that the local bank which had discounted the draft, and took the bill of lading as collateral for its discount without taking any other security, lost? Has not that been the most frequent cause of loss?

Mr. PIERCE. Of course in that case under this law we would be responsible to the local bank.

Mr. BARTLETT. And you would be made the insurers of the business methods of the bank that discounted the paper?

Mr. PIERCE. That is exactly the case.

Mr. RICHARDSON. By this bill you think that the common carrier guarantees the payment?

Mr. PIERCE. It makes us the guarantors of the honesty, the financial responsibility, of every man the banks are fit to deal with in connection with this paper.

Mr. RICHARDSON. You do not know anything about that man?

Mr. PIERCE. We do not know anything about that man. It is not our business to investigate his financial responsibility. But this bill seeks to make us responsible for his financial responsibility and for his honesty. If he is honest and delivers us the goods, then there is no liability, because there is no question about this case when the goods actually come into the possession of the railroad company.

Mr. BARTLETT. No question. Now take the straight bill of lading. Even on a straight bill of lading, if you delivered the property to the wrong person, to some other person than the person named by the bill of lading, you would be liable?

Mr. PIERCE. Yes; I meant on the straight bill of lading where we delivered to the person named in the bill of lading we would not be responsible if we did not take up the bill of lading.

Mr. RICHARDSON. Another question on that line. Sometimes a shipment is made and the bill of lading reaches there and the property is turned over on the bill of lading that is presented, and the common carrier comes out after that and says there is some additional freight due. Does not that occur very often?

Mr. PIERCE. Yes.

Mr. RICHARDSON. How does that happen, when the freight is paid in advance?

Mr. PIERCE. That usually happens in this way; that the agent either at the point of origin or at the point of destination has made a mistake in figuring the freight rate, and when these accounts go to the auditing department, to the headquarters where they are all verified, they find that there has been an error made in the freight rate, and then they send back to the agent to collect the difference, if there has been an undercharge.

Mr. RICHARDSON. And that agent, in the discharge of his duty, delivers that property to the consignee, who presents that bill of lading, with the charges prepaid on it, and you send it back there to him, and you make that honest agent there, who did his duty, pay the difference?

Mr. PIERCE. No, sir; I do not think we ever did.

Mr. RICHARDSON. Do you not do that?

Mr. PIERCE. No, sir; I do not think we have ever made an agent pay for one of his mistakes in collecting an undercharge, in a case of that kind, because they almost always are honest mistakes. Tariffs are complicated documents, and any man will make mistakes in multiplication and addition, and in all cases of that kind we do not undertake to have the agent pay it, but we undertake to collect from the consignee or the consignor the balance of the freight rate.

Mr. RICHARDSON. I understand when the freight rate is prepaid from the initial point, and the freight goes to the consignee and he has it delivered to him, if there is any mistake about it the railroad is responsible.

Mr. PIERCE. Under the law, they go back and collect the correct charges, whatever they are. If, for instance, the freight rate is \$25 and the agent makes a mistake and only collects \$20, and the property is delivered to the consignee, the law requires us to go back and collect that other \$5 from somebody.

Mr. RICHARDSON. From somebody?

Mr. PIERCE. From the consignor or the consignee.

Mr. RICHARDSON. Of course you can not get it from the consignee. The consignee has got his property.

Mr. PIERCE. We can get it from the consignor, then. That is a mooted question, whether the consignor or the consignee is responsible; but one or the other is responsible, and the Interstate Commerce Commission are issuing almost daily bulletins to the effect that they will hold the railroads responsible for not collecting these undercharges from the consignee or consignor.

I have been digressing a little, but I wanted to close by saying this, that for two years or more previous to the adoption of this bill of lading, this whole question was a subject of discussion between the railroads and interests of all kinds throughout this country. The Interstate Commerce Commission, while there was some doubt as to whether it had the right to prescribe a uniform bill of lading, recognized the absolute necessity and desirability of having a uniform bill of lading, so they took up the subject for very elaborate consideration. They held meeting after meeting, and after a great many meetings they adopted a draft of a bill of lading. It was sent out all over the United States to railroads, to shippers, to bankers, and to every interest in this matter, and these various interests and the railroad companies were invited to criticise this bill of lading. After these criticisms had been made the Interstate Commerce Commission called a public hearing in the city of Washington. I attended it myself. I do not know how many were there, but I suppose there were 1,000 representatives at that meeting. It was discussed there through a period of three or four days. Among the people who were most interested in that proceeding were the very people who are presenting this bill to-day, the people who wanted absolute protection. The Interstate Commerce Commission heard what they had to say, and after they had heard the arguments and heard everything that all interests had to say in regard to this matter they deliberately decided upon the uniform bill of lading that is in existence to-day as being the fairest instrument that that expert body could decide upon, after consideration, as I say, of more than two years. That

bill of lading, gentlemen, imposed upon the railroad companies additional liabilities to their common law liabilities. It contained a good many things that we did not want. It did not contain many things that we did want; but we said to the Interstate Commerce Commission in effect, and we demonstrated the good faith of that assertion by our subsequent actions, "We agree with you that it is necessary to have a uniform bill of lading. Now, whether you have power to prescribe a uniform bill of lading or not, prepare such a document as in your judgment will be the fairest document, taking into consideration all interests and the entire commerce of the country, as you can." The result was the promulgation of this uniform bill of lading.

The Interstate Commerce Commission sent it out and they asked the railroads throughout the country to adopt it. The railroads west of Chicago and east of Chicago and in southern territory have adopted that bill of lading in its entirety. I think a few changes were probably made in southeastern territory on account of some local conditions, but those changes were made by consent of the Interstate Commerce Commission.

Mr. BARTLETT. Have you a copy of that in the record?

Mr. PIERCE. Yes; a copy of it is in the record. It is absolutely impossible for any bill of lading ever to be adopted that will be satisfactory to everybody. You might legislate from now until doomsday on a uniform bill of lading, and you could not get one that would give every interest everything they wanted. It is admitted on all hands that it is necessary in the interest of the common good that there should be one uniform bill of lading. The Interstate Commerce Commission have performed that duty, and we have accepted that bill of lading, and we have put it into effect, and we are using it, and I say that after that has all been done, after these gentlemen have been heard most elaborately, both by witnesses and by argument and by printed brief, that simply because they did not get that absolute protection that they contended for before the Interstate Commerce Commission, we should not undo in large part what the Interstate Commerce Commission did, and do what they thought should not be done by undertaking to legislate specially in favor of special interests that did not get what they wanted in that proceeding, and I submit that we have now just as fair a bill of lading as we can possibly get, and if the Interstate Commerce Commission want to change that bill of lading at any time that ought to be the body to change it, because it is an expert body, it is traveling all over this country, it is studying these conditions daily, and that body is better able to determine from time to time whether any changes should be made in this bill of lading.

Mr. STEVENS. Do you think a uniform bill of lading is a good thing as a matter of public policy?

Mr. PIERCE. I think it is an absolute necessity.

Mr. STEVENS. Yes; but you do not think that a uniform liability on the bill of lading is a good thing, do you?

Mr. PIERCE. Yes; there is a uniform liability.

Mr. STEVENS. Do not some States have statutes providing, or do not the holdings of their courts provide, for one kind of liability upon a bill of lading where goods are not received, and do not other States have another holding? Is not that the fact?

Mr. PIERCE. You have asked me——

Mr. STEVENS. Is not that the fact; yes or no?

Mr. PIERCE. There are different rules in effect in different States.

Mr. STEVENS. Do you not think there ought to be a uniform liability?

Mr. PIERCE. I can only give you my opinion on that proposition. I argued before the Supreme Court of the United States about eighteen months ago that very question, as to whether state statutes could in any way control a contract of interstate shipment. I took the position that state statutes were not applicable to interstate contracts of shipments. I believe that is the law, and while the state courts have applied their local statutes to local shipments, yet I believe that when the question is finally presented to the Supreme Court of the United States in a clear-cut case, that court is bound to hold that these state statutes can not in any way control or govern contracts of interstate shipment.

Mr. STEVENS. If they can not, then what?

Mr. PIERCE. If they can not, then we have in effect to-day, unembarrassed by any state statutes, a uniform bill of lading put into effect by the national tribunal.

Mr. STEVENS. If that be true, then do you think as the law stands now the Interstate Commerce Commission could make effective in the uniform bill of lading, by amending it, some such provision as you have been objecting to to-day? Do they have that authority now to do it if they see fit?

Mr. PIERCE. I will be absolutely frank with you and say I believe there is a question whether the Interstate Commerce Commission has that authority to-day. Inasmuch as it is desirable that there should be a uniform bill of lading after proper consideration of all interests, and inasmuch as changing conditions may from time to time necessitate a change in some of the terms of the bill of lading, I should say that if there is any doubt as to whether the Interstate Commerce Commission has power to prescribe a uniform bill of lading, and there is to be any legislation on the subject, that doubt might be removed by giving to the commission that power. I do not think we would have any objections to that, because I do not believe that it is possible for the shippers and the railroads of this country ever to get together upon a uniform bill of lading, and therefore it is necessary that somebody should be endowed with that authority. But I do not think it is proper to go into it by piecemeal and have special legislation which is asked at various times by special interests to get something that they did not get from the Interstate Commerce Commission. But so far as the situation exists to-day, you have before you a bill of lading that was put into effect by national authority, and it went into effect as completely and effectively as if the Interstate Commerce Commission had been endowed with the necessary authority to force it if the carriers and shippers did not accept it.

The CHAIRMAN. In the bill which I introduced to amend the interstate commerce act, the Interstate Commerce Commission is given authority to control regulations and practices affecting the issuance, form, and substance of bills of lading, facilities for transportation, and all matters relating to or connected with the receiving, handling, transportation, and delivery of property.

Mr. PIERCE. Yes, that seems to confer upon the commission the power to do it.

The CHAIRMAN. It would, if passed.

Mr. PIERCE. Yes, sir; I mean it would, if passed. I do not think it is a very bad provision, myself. I do not think it is a very bad provision. I thank you, gentlemen, for your attention.

**STATEMENT OF MR. T. J. NORTON, OF THE LAW DEPARTMENT,
ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY.**

Mr. NORTON. I appear not only on behalf of the Atchison, Topeka and Santa Fe Railroad Company, but also on behalf of other western lines, upon telegraphic request, which left me a very short time for preparation; but it seems to me that the whole body of this matter before the committee was characterized in the following language by the Supreme Court of the United States:

The law can punish roguery, but can not always protect a purchaser from loss, and so fraud, perpetrated through the device of a false bill of lading, may work injury to an innocent party which can not be redressed by a change of victim.

This bill, as I understand it, is only designed to change the victim, and make the victim, in all instances whatsoever, the common carrier, the railway company. While the reasons given for urging this bill of lading upon this committee have been given, and the difficulties that arise on account of frauds perpetrated by the agent and by the shipper, I may say that as a matter of experience of many years in looking over accounts, I never came across one of that sort, and the one that was most carefully exploited in the first place turned out in the end to have been one where there was no loss at all. That was on the Gulf line, a part of the Santa Fe system in Texas. So that after the details of the transaction had been finally unwound it turned out that the railroad company stood responsible for the loss in that instance; and, as one of the committee suggested, there was a plain remedy at law without any legislation in that case.

I wanted, briefly, to refer to this case of *Friedlander v. The Texas and Pacific Railway Company* (130 U. S., p. 416), because it is a cotton case, a Texas case, and a case of a bill of lading like this. I think that the language which I am to read from the opinion of the Chief Justice will state sufficiently the facts, so that I will cut it as short as possible by referring to the case:

The agreed statement of facts sets forth "That, in point of fact, the said bill of lading of November 6, 1883, was executed by said E. D. Easton——

He was the agent——

"fraudulently and by collusion with said Lahnstein——

He was the commercial man——

"and without receiving any cotton transportation, such as is represented in said bill of lading, and without the expectation on the part of the said Easton of receiving any such cotton;" and it is further said that Easton and Lahnstein had fraudulently combined in another case, whereby Easton signed and delivered to Lahnstein a similar bill of lading for cotton "which had not been received, and which the said Easton had no expectation of receiving;" and also, "that, except that the cotton was not received, nor expected to be received, by said agent when said bill of lading was by him executed as aforesaid, the transaction was, from first to last, customary."

That is the point that has been urged upon you here to-day.

In view of this language, the words "for transportation, such as is represented in said bill of lading" can not be held to operate as a limitation. The inference to be drawn from the statement is that no cotton whatever was delivered for transportation to the agent at Sherman station. The question arises, then, whether the agent of a railroad company at one of its stations can bind the company by the execution of a bill of lading for goods not actually placed in his possession, and its delivery to a person fraudulently pretending in collusion with such agent that he had shipped such goods, in favor of a party without notice, with whom, in furtherance of the fraud, the pretended shipper negotiates a draft with the false bill of lading attached.

This case, it seems to me, covers all the points before us. The court continues:

Bills of exchange and promissory notes are representatives of money—

Now, that is the point that I endeavor to make here, that they are desiring to have Congress convert bills of lading into absolute negotiable instruments, and here is the distinction that the Supreme Court draws between them:

Bills of exchange and promissory notes are representatives of money, circulating in the commercial world as such, and it is essential, to enable them to perform their peculiar functions, that he who purchases them should not be bound to look beyond the instrument and that his right to enforce them should not be defeated by anything short of bad faith on his part. But bills of lading answer a different purpose and perform different functions. They are regarded as so much cotton, grain, iron, or other articles of merchandise, in that they are symbols of ownership of the goods they cover. And as no sale of goods lost or stolen, though to a bona fide purchaser for value, can divest the ownership of the person who lost them or from whom they were stolen, so the sale of the symbol or mere representative of the goods can have no such effect, although it sometimes happens that the true owner, by negligence, has so put it into the power of another to occupy his position ostensibly as to estop him from asserting his right as against a purchaser, who has been misled to his hurt by reason of such negligence.

The Gulf company in this case was negligent in allowing the cotton to be taken away, except by writ of attachment or some other writ of law, and probably that is the reason why the carrier afterwards settled the liability. I do not think there is any question about that being the law now.

Mr. STEVENS. No; it is expressly provided for here in this bill.

Mr. NORTON. I was going to inquire whether this had been superseded by something better. It gives the reason for this and draws the distinction between a negotiable instrument and a bill of lading, and gives the reason why the bill of lading should not be made negotiable. Commercial paper is money, or stands for money. The bill of lading stands for property.

It is true that while not negotiable as commercial paper is, bills of lading are commonly used as security for loans and advances; but it is only as evidence of ownership, special or general, of the property mentioned in them, and of the right to receive such property at the place of delivery.

Such being the character of a bill of lading, can a recovery be had against a common carrier for goods never actually in its possession for transportation, because one of its agents, having authority to sign bills of lading, by collusion with another person, issues the document in the absence of any goods at all?

The court says further:

It is a familiar principle of law that where one of two innocent parties must suffer by the fraud of another, the loss should fall upon him who enabled such third person to commit the fraud.

That goes to a question that several of you gentlemen have put, namely, Why ought we not to be liable to insure the honesty of our agent? If that could by any possibility be done, why should we be asked to go one step farther and insure the honesty of the party who misled the agent? As has been pointed out to you, in all those instances the agent never got anything for himself, but was imposed upon by some business man who represented that he was backed by banks and had large credit. The opinion continues:

But nothing that the railroad company did or omitted to do can be properly said to have enabled Lahnstein to impose upon Friedlander & Co. The company not only did not authorize Easton to sign fictitious bills of lading, but it did not assume authority itself to issue such documents except upon the delivery of the merchandise. Easton was not the company's agent in the transaction, for there was nothing upon which the agency could act. Railroad companies are not dealers in bills of exchange——

and this bill wants to make them such——

nor in bills of lading; they are carriers only, and held to rigid responsibility as such.

The proposition here is to hold us to rigid responsibility as to negotiable instruments.

Easton, disregarding the object for which he was employed, and not intending by his act to execute it, but wholly for a purpose of his own and of Lahnstein, became particeps criminis with the latter in the commission of the fraud upon Friedlander & Co.

As one of your members has pointed out, the law could take care of him.

It would be going too far to hold the company, under such circumstances, estopped from denying that it had clothed this agent with apparent authority to do an act so utterly outside the scope of his employment and of its own business. The defendant can not be held on contract as a common carrier, in the absence of goods, shipment, and shipper; nor is the action maintainable on the ground of tort.

Finally it says:

The law can punish roguery, but can not always protect a purchaser from loss, and so fraud perpetrated through the device of a false bill of lading may work injury to an innocent party, which can not be redressed by a change of victim.

The point I desire to make here is that in the instances mentioned, which are very rare, it turned out that in my opinion there was redress at law without the aid of this legislation. In the case particularly cited respecting our railway in Texas, the admission was in the end made that the shipper was indemnified by the company, or by some one. At any rate, the losing party recovered its money in the end.

The CHAIRMAN. Do you raise any question about this proposition, that the railroad company should not issue a bill of lading until it has received the goods and has them in possession?

Mr. NORTON. That is the rule.

The CHAIRMAN. I am not talking about what the rule is, but about what ought to be. Do you make any question as to the desirability of a law requiring the railroad company to have in its possession the goods before it issues a bill of lading describing them?

Mr. NORTON. I think in practice there might be some instances in which that would be an interference with the free action of commerce.

The CHAIRMAN. Of the shipper?

Mr. NORTON. Of the shipper.

The CHAIRMAN. Yes; you are representing the railroads.

Mr. NORTON. Yes.

The CHAIRMAN. In behalf of the railroads do you make any question that the railroad company ought to issue a bill of lading only after it has received the goods?

Mr. NORTON. No; I do not.

The CHAIRMAN. Do you make any question whether, after the railroad company has received the goods and issued an order bill of lading which goes into banking channels, perhaps, you should retain possession of the goods until the order bill of lading is presented for the purpose of obtaining delivery of the goods?

Mr. NORTON. At the other end?

The CHAIRMAN. At the other end.

Mr. NORTON. So far as the railroad company itself is concerned, leaving out commercial practices and considerations, I do not.

The CHAIRMAN. I am only asking for your views on that from the railroad's point of view. If the laws should simply provide that you should give a bill of lading for the goods actually received, and hold those goods in your possession until the order bill of lading is presented, could there be any possible objection to that on the part of the railroad?

Mr. NORTON. I can think of none on the instant, no, stating it from the railroad's point of view, alone.

The CHAIRMAN. From the railroad's point of view?

Mr. NORTON. Yes.

Mr. BARTLETT. You ought to do that, and you try to do it now, do you not?

Mr. NORTON. Yes.

Mr. BARTLETT. You have no objection to that.

Mr. NORTON. No, sir. The orders are, as has been stated with respect to other carriers, that the agent shall not issue an order bill of lading until he has the goods, and the rule is, especially on order bills of lading, that the goods shall not be given up until the person who has been notified as the receiver of the goods presents the bill of lading, and he can not get the bill of lading until he goes to the bank and pays the draft.

Mr. BARTLETT. I take it your objection is opposed especially to that part of the bill which would refer to the description of the goods being accurate in the bill of lading?

Mr. NORTON. Yes.

Mr. BARTLETT. The railroad company, from your point of view, by that language in the bill becomes the guarantor of the quality and character of the goods?

Mr. NORTON. Yes.

Mr. BARTLETT. Although it might be deceived, or its agent might collusively issue a bill of lading?

Mr. NORTON. Yes.

Mr. KENNEDY. If there was a penalty against the railroad issuing a bill of lading before the goods were received, they would have to respond where their agent did that, would they not?

Mr. NORTON. They would in the case of a penalty. I presume the agent would be liable.

Mr. KENNEDY. He would be liable, of course; but the business of a freight agent is a pretty responsible business, receipting for goods.

Mr. NORTON. Yes.

Mr. KENNEDY. Freight agents usually have these bills of lading in blank in their possession?

Mr. NORTON. Yes, in large numbers. But whether the company would be liable criminally for the act of the agent contrary to his authority, unless there was some such provision in the statute as is in the interstate commerce act, that anything done in his line of duty—

Mr. KENNEDY. The enacting of this law would make the freight agent a sort of vice-principal?

Mr. NORTON. Yes; but such a provision as that would greatly hamper the business man in his transactions. For example, I presume our agent at Chicago would raise no question, if he got a telephone message from Marshall Field & Co. to make out a bill of lading for a certain shipment of goods, but what these goods would be delivered, and the bill of lading would be made out, and it would perhaps greatly expedite the transaction of business to transact it in that way rather than to wait until the goods came down, and we send an agent to know whether they were there, and then make out the bill of lading. But we do not care how much delay there may be at the other end; we can wait until the bill of lading has been presented; but such a requirement as that at the initial point, at least, would be a great inconvenience to the shipping public.

The CHAIRMAN. Have you or any of the other gentlemen considered this proposition? Our jurisdiction is limited to the transportation of commerce between the States. Have you considered the question whether we have the authority to legislate as to the issuance of a bill of lading where there are not only no goods transported, but there are no goods delivered?

Mr. NORTON. As an interstate regulation?

Mr. STEVENS. Where there is no commerce?

The CHAIRMAN. As to the matter of our power to regulate commerce, whether we can say as a constitutional question that we have the power to control the issuance of a bill of lading purporting to be for goods received to be shipped in interstate commerce, when in fact they are not shipped in interstate commerce and not even delivered for that purpose; have you examined that constitutional question?

Mr. NORTON. No, I have not. I would not pretend to try to answer that, Mr. Chairman.

Mr. BARTLETT. In other words, the Chairman means whether or not we can in dealing under the commerce clause of the Constitution, and aiming to deal with interstate commerce, make something a crime which is not done in interstate commerce.

Mr. STEVENS. That is very fully discussed in that brief of Mr. Taft. I had that same view and raised that same question, I confess. I became satisfied by that brief. Do you contend in a case where Marshall Field & Company sent down to you—telephoned down to you—to make out a bill of lading for 100 cases of goods to be dispatched over your line and the bill of lading was made out and delivered to Marshall Field & Company when as a matter of fact only

50 cases came down, that your agent had no authority in a case of that kind?

Mr. NORTON. The agent probably would have authority directly, in respect to Marshall Field & Company. An exception would be made in the case of that company.

Mr. STEVENS. Supposing John Jones did it?

Mr. NORTON. The general instructions to the agent as to issuing bills of lading only upon receipt of the goods would apply to John Jones, and the case of Marshall Field & Company, or Carson, Pyrie, Scott, and others, would be exceptional; and their cases being exceptional, made exceptional by particular instructions, he would have the authority of the employer.

Mr. STEVENS. Then the secret instructions you had given your agent would constitute his authority as against the consignee at the other end who would pay the bill of lading, acting in good faith, on the credit of the Atchison, Topeka and Santa Fe Railroad? You know that such things are done in the due course of business by railroads?

Mr. NORTON. Yes.

Mr. STEVENS. If they are done, have not your agents authority to issue that sort of bills of lading?

Mr. NORTON. Generally.

Mr. STEVENS. But if they have a different rule for Marshall Field from that which they have for John Jones, what difference does that make so far as the consignee is concerned who pays that bill of lading on the strength of what your company has done?

Mr. NORTON. No. I think that the consignee is charged with notice of the principles of trade and transportation, and I think, as has been suggested, that if the bankers would take as much pains in looking up the matter of bills of lading as they do other commercial paper, they would not have so much trouble.

Mr. STEVENS. You gentlemen insist upon talking about the bankers, when they have not appeared here much, if any. It has been the consignees, the shippers, the merchants, who have appeared. Will you tell us why the man who received that draft attached to the bill of lading for 100 cases of goods when, as a matter of fact, you only delivered 50, should suffer from the action of your company?

Mr. NORTON. In the case of John Jones it was not the action of our company, and I do not think that the consignee had any right to assume that it was, for the reason that I just read from the opinion of the Supreme Court.

The CHAIRMAN. On that line, your claim is that the railroad company has no authority to issue a bill of lading until it receives the goods?

Mr. NORTON. That is the custom.

The CHAIRMAN. I understand that is your position?

Mr. NORTON. Yes.

The CHAIRMAN. Supposing the railroad company does issue a bill of lading before it receives the goods; is the bill of lading, when it issues it, valid or invalid, the goods not yet having been received?

Mr. NORTON. Legally, under this bill it would be invalid; under the bill you propose.

The CHAIRMAN. I am talking about now.

Mr. NORTON. Yes; I think until a contrary showing was made the carrier would be bound by the representations on the bill of lading.

The CHAIRMAN. Is it valid or invalid when it is issued?

Mr. NORTON. It is valid upon its face.

The CHAIRMAN. What?

Mr. NORTON. Yes; it is valid for what it purports to be.

The CHAIRMAN. Then the agent must have authority to issue it.

Mr. NORTON. No, not necessarily; because it presumes, upon its face, until the contrary appears, that the goods have been received.

The CHAIRMAN. I am not talking of what it appears on its face, but what it is. When it is issued, is that valid or invalid?

Mr. NORTON. It is valid when the goods have been delivered; but if not, it is invalid *ab initio*.

The CHAIRMAN. Is it valid unconditionally?

Mr. NORTON. It is valid if the goods turn up, but it is invalid *ab initio* if they do not.

The CHAIRMAN. It is either valid or invalid when the goods are delivered.

Mr. NORTON. That is not the whole transaction.

The CHAIRMAN. It must be valid or invalid when it is issued.

Mr. NORTON. It is, by relation.

The CHAIRMAN. Is it valid or invalid when it is issued?

Mr. NORTON. It is valid as of its date, by relation, when the goods are delivered.

The CHAIRMAN. You do not answer the question. You side step it very skillfully.

Mr. NORTON. No, I beg your pardon; I think not. It is the same as a filing on public lands; the same as taking up a railroad right of way; it relates back by other steps to the original date. The bill of lading is valid of the date of issue if the company gets the goods.

The CHAIRMAN. It is valid if something happens afterwards. That does not determine whether it is valid at that time or not. You must know whether it is valid then or not. Has the agent exercised his authority to issue it when he issues it, or is it an invalid paper?

Mr. NORTON. He has gone beyond his authority except in the case of Marshall Field & Company. It would be invalid as to Jones.

Mr. STEVENS. Do you think under the interstate-commerce law, which prohibits discriminations between Marshall Field & Company and John Jones, that you have a right to discriminate between them in that way; that you have a right when Marshall Field & Company telephone to have a bill of lading issued and refuse to do that in the case of John Jones, thus discriminating against him?

Mr. NORTON. I do not think it is a discrimination, because the law allows us plainly to give credit in some cases and not in others. Where it is impracticable to render bills daily, as in the case of Marshall Field, or to render a bill every time a shipment is made, we are permitted under the decisions to do that, and to collect on the spot from the small shipper, and that is not discriminatory. That is a facility which we give to large shippers generally for transacting business, and it is not done for any discriminatory purpose. It enables business to move more rapidly.

Mr. STEVENS. As a matter of fact, it is done with a discriminatory purpose, is it not; it does give an advantage to the large shipper which is forbidden to the small shipper?

Mr. NORTON. No; I should say, in the case cited, that those people do not want to discount any bills of lading at all. Marshall Field & Company would not want the benefit of the bill of lading which is under discussion here to-day; they would not want to send it to a bank; they would not care anything about it.

Mr. STEVENS. If Marshall Field & Company asked for a bill of lading for 100 cases of goods and only 50 cases should be received, in that case Marshall Field & Company's bill of lading would be valid; but if John Jones telephoned for a bill of lading for 100 cases and he only sent 50 cases, his bill of lading would be invalid, would it not?

Mr. NORTON. No, sir; Marshall Field & Company would be able to respond to the carrier.

Mr. BARTLETT. The bill of lading would be invalid whether it was issued to Marshall Field & Company or to John Jones, if you did not get the goods?

Mr. NORTON. Yes; or if it was issued by the agent without authority.

Mr. STEVENS. But he did have authority, as you have just stated. The case you put was where a bill of lading for 100 cases of goods was issued by your agent to Marshall Field & Company, and through an oversight only 50 cases were sent. As the chairman asked you, that bill of lading would be unquestionably valid?

Mr. NORTON. In that case there would be no loss.

Mr. STEVENS. That would be valid?

Mr. NORTON. Yes, sir; that would be valid, against the company.

Mr. STEVENS. And the consignee could recover against your company?

Mr. NORTON. Yes.

Mr. STEVENS. But if John Jones did that, he could not?

Mr. NORTON. And the company could recover against Marshall Field & Company.

Mr. STEVENS. Yes; but if John Jones did that identical thing, that would be invalid?

Mr. NORTON. Well, yes; if John Jones got a bill of lading without authority.

Mr. STEVENS. And yet you maintain that is not a discriminatory practice?

Mr. NORTON. Well, you have perhaps built up a larger transaction of this sort than really occurs in trade. I am not able to say how extensive that is, but I assume there are cases in which those large shippers handling carloads every day are permitted to have bills of lading before the agent knows, physically, that the property is in his possession.

This proposition that I have read from the decision of the Supreme Court of the United States is followed, according to a footnote, in Elliott on Railroads, which I looked at at noon. I mention this because of something which was said this morning as to how common the rule asked for here is under the statutes of the States. The following States are cited in the footnote from which I got this case: Maryland, Illinois, Louisiana, Ohio, Missouri, Indiana, Minnesota, Nebraska, and New York.

The CHAIRMAN. Are you familiar with the handling of live stock at the stock yards?

Mr. NORTON. No, sir; not at the stock yards in Chicago. I believe that is all I care to say.

Mr. STEVENS. In paragraph 2 of the "conditions" of the uniform bill of lading appears this:

No carrier or party in possession of any of the property herein described shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law.

Does that refer to the decisions of other States than those you represent?

Mr. NORTON. Yes, I think that is what that was put in for. I had something to do with the conference.

That was the intent, by that language to cover such cases, in part at least, and to cover also the Carmack amendment. The question was put as to the liability in different States, for instance, as to the number of hours after the shipment had arrived that the common carrier would be liable as a common carrier and as a warehouseman. That was finally agreed upon to be forty-eight hours, increasing our liability in several of the States, which ceases as a carrier and begins as a warehouseman immediately on the delivery of the goods; but the Carmack amendment was intended to be covered by that, too.

The CHAIRMAN. That is all.

Mr. NORTON. I recall that Mr. Barlow, whose testimony has been referred to here by one of the members of the committee, stated that under the arrangement as it has existed all this time without the legislation desired, the commerce has been very great; the commerce, wheat and other crops, has been moved very easily, without credit being extended on these bills of lading and their being converted into commercial paper.

STATEMENT OF MR. CLAUDIAN B. NORTHRUP, ASSISTANT GENERAL COUNSEL, SOUTHERN RAILWAY COMPANY.

Mr. NORTHRUP. In view of the lateness of the hour and the thorough way in which this matter has been covered by others, I will not consume very much time. I think we all understand the principal thing that this bill is driving at; that is to say, it wants to make a bill of lading something like a bill of exchange. The Supreme Court of the United States has discussed the nature of a bill of lading, and contradistinguished it from a bill of exchange in two cases, the case of *Shaw v. The Merchants' National Bank of St. Louis* (101 U. S., 557), and the case of *Friedlander v. The Texas and Pacific Railway Company* (130 U. S., 416). The committee is very likely familiar with these cases. The court has pointed out that a bill of lading is a symbol of property, whereas a bill of exchange is money. It also points out in those cases that negotiability simply means assignability, or the right of a third party to sue on a contract. Now, we have in the correct sense of that word "negotiable," a bill of lading which enables an assignee to sue on the contract as it stands at present. In those two cases the Supreme Court has also shown why it would be unwise to give to a symbol of property the same functions that a bill of exchange or a bank note has, and it is very plain; and there is not anything in this bill that would protect the public generally, or the owner of any property, from being

defrauded of that property and being deprived of that protection which the law surrounds personal property with, if you convert this symbol into practically a bill of exchange and a bank note.

Now let us take the actual example of the Shaw case. I do not see how it can be answered or is answered in any way by this bill, or how it could be answered by any other bill that might be prepared or devised. It would just simply deprive personal property of the protection which the law gives it. Of course a bill of exchange or a bank note can pass around from hand to hand, and it is good in the possession of anybody who may have it, except a thief, of course, and he passes it on to third persons for value and the real owner can not go and recover that bank note. But if a thief steals a pair of shoes and carries them around and gives them to a third person and that person pays for them, and that man sells them to a fourth person, the real owner of the pair of shoes can get them. So you take this case, as I say, the Shaw case; it was a case where a bill of lading was discounted at the Merchants' National Bank, in St. Louis, and the bank gave its money on that bill of lading, taking the symbol of the property as security for the money that it paid on the note, or whatever other paper was discounted—that is, the bill of lading. A draft was attached to that bill of lading and it was sent through the mail to the consignees to be paid. While it was in the mail somebody stole it. The thief took it and had it discounted by another person who paid money on it, and in the course of time the bill of lading was presented and the property demanded. If this proposed law had been in effect, the railroad company would have been obliged to turn that property over to the innocent holder of that bill of lading, although it had been stolen out of the mail, just as the cotton or whatever it stood for might have been stolen out of the cars, and there was absolutely no title in the holder of the bill of lading or the holder of the property which had been stolen, and the original bank which discounted that paper would have been out of pocket. So the Supreme Court stated in that case that these bills of lading are merely symbols of the property, and the policy of the law is to protect the real owners of property. Consequently it was open to the bank in St. Louis to come in and show that they had originally discounted that bill of lading, that it had been stolen, and that the innocent holder who bought it from the thief had really no title to that property. Now, you are asked to reverse the whole scheme and system of the law which is based upon protection of personal property, by this bill, and nobody can tell how far-reaching it may be or how much harm may come of that. I have been unable, myself, to find any answer in my own mind to the difficulties that would arise out of that situation, and probably it would be a very Pandora's box, and the banks themselves would suffer, and anybody who has any interest in the protection of title to property would suffer.

You have had enough said, it seems to me, about the description in this bill, so that I will not consume any time on that.

The chairman referred this morning to the English statute, and I would like to call attention to it again. If there is obliged to be a law on this subject, it seems to me the English law is as wise a law as can be passed. You will find that that law is based on justice. It does not seek to impose the responsibility on the innocent carrier, but it imposes the responsibility and liability on the master

who issues the fraudulent bill of lading, and the punishment on the shipper who colludes with him, and it leaves it open to those two to explain themselves, if they can do it. This is the language of that law:

SEC. 3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, shall be conclusive of such shipment as against the master or other person signing the same.

Not against the carrier, but against the person who commits the fraud. That is justice.

The CHAIRMAN. Do you not think that means against the carrier?

Mr. NORTHPROP. No, sir; it does not. There is a decision of the court of Minnesota right on that point, in the case of the National Bank of Commerce *v.* The Chicago, B. and N. Company (46 NW. Rep., 342). I will read what the supreme court of Minnesota said about that.

The CHAIRMAN. Have there been no decisions of the English courts on that English statute?

Mr. NORTHPROP. I think there have, but I have not got them. I will just read what the Minnesota court says. I will be very glad to look up those English decisions, if it is necessary. This is the language of the supreme court of Minnesota:

There is an unbroken line of authorities in England that, even as against a bona fide consignee or indorsee for value, the carrier is not estopped by the statements of the bill of lading issued by his agent, from showing that no goods were in fact received for transportation. And this has not been at all changed by the "bills of lading act" (18 and 19 Vict., cl. 111, par. 3). It is also the settled doctrine of the federal courts.

The CHAIRMAN. That hardly carries out your contention. That admits that the carrier is liable.

Mr. NORTHPROP. I beg your pardon; "the carrier is not estopped."

The CHAIRMAN. No; that admits that the carrier is liable.

Mr. NORTHPROP. No.

The CHAIRMAN. Why, certainly; but the English statute provides that the bill of lading in the hands of an innocent purchaser shall have no greater effect than in the hands of the original person; and, of course, it is proper and always will be to show that where the carrier issues a bill of lading to a man without receiving the goods, it did not receive the goods. As against him the carrier can show that it did not receive the goods. That is all that that decision holds.

Mr. NORTHPROP. I do not read it the same way that you do. Let me read it again. Perhaps you did not catch what the court says:

There is an unbroken line of authorities in England that, even as against a bona fide consignee or indorsee for value, the carrier is not estopped by the statements of the bill of lading issued by his agent, from showing that no goods were in fact received for transportation. And this has not been at all changed by the "bills of lading act" (18 and 19 Vict., cl. 111, par. 3). It is also the settled doctrine of the federal courts.

The CHAIRMAN. That is, that only gives the indorsee the same rights that the original holder had. That is the act.

Mr. NORTHPROP. That is the language of the supreme court of Minnesota which I just read, and I take it that it is a comment on the English act which makes the master responsible and not the vessel. It does not make the vessel responsible, or the owner, or the carrier.

The CHAIRMAN. The vessel is just as much responsible as the master.

Mr. NORTHROP. Not at all.

The CHAIRMAN. Either one is responsible as against the purchaser.

Mr. NORTHROP. No; this is the language of the English statute which is commented upon in that decision, which decision says that it has not changed the old English law so far as the carrier is concerned, but leaves it just exactly where the federal court—the Supreme Court—has put it. The words of the statute were as follows:

SEC. 3. Every bill of lading in the hands of a consignee or indorsee—

The CHAIRMAN. Read the first section.

Mr. NORTHROP. The first section reads:

SEC. 1. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

The CHAIRMAN. There is the proposition. He has the same right as though the contract had been made with him originally, and of course it was always competent, and always will be competent, to show as against the holder of the bill of lading, while he holds it, that he did not deliver the goods.

Mr. NORTHROP. Exactly. Now, it goes on in the third section as to who is responsible. It does not put the responsibility on the carrier, it puts it on the master, if a fraudulent bill of lading is issued and gets into the hands of a bona fide holder. Of course if it is right there between the parties originally, there is no trouble. Section 3 reads:

SEC. 3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, shall be conclusive of such shipment as against the master or other person signing the same.

That is all. It does not say the carrier or the vessel.

The CHAIRMAN. You have not read all of that section. Mr. Paton read that.

Mr. NORTHROP. I will be glad to read the rest of it. I thought you called the attention of Mr. Paton to it on a passage that would be very valuable. I will read the whole of it.

SEC. 3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, shall be conclusive of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board; provided, that the master or other person so signing may exonerate himself—

Not the carrier—

in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

Now, that language did not try to put it on the carrier.

The CHAIRMAN. I should say, without question, under that the carrier was liable.

Mr. NORTHPROP. The supreme court of Minnesota says exactly the reverse.

The CHAIRMAN. I do not read it that way.

Mr. NORTHPROP. There is not any question about it, and I will be glad to get the English authorities on the subject. The point of it is that they have put it on the people where it belongs; on the people who are guilty of the fraud, and not upon some innocent outsider. There is no justice in making innocent persons suffer for anything, and it does not conserve the policy of good government to do that.

Something was said this morning about the right of the Government to make contracts between shippers, under the commerce clause of the Constitution. I do not say that I have given that any particular study, but in the case of *Allgeyer v. Louisiana*, which is a case that is, no doubt, familiar to this committee, the Supreme Court of the United States took occasion to say that the freedom of contract was guaranteed by the Constitution of the United States, and they have never modified that doctrine in any of the antitrust cases, except in the case of any unlawful contract, such as the keeping up of saloons or immoral contracts or something of that kind; and in the lottery post-office cases, and in all that line of cases, they have never stricken down or curtailed the right of contract which is protected by the Constitution, except where the contracts are of that nature that they offend the police power of the Government or have something immoral or improper in them. In other words, wherever men contract for some good object, such as the promotion of trade, banking business, or something of that kind, they have freedom of contract, and the power to regulate commerce is conserved by promoting that freedom of contract, and controlling it by such necessary police regulations as may be within the powers of the Government.

Mr. STEVENS. In the Addystone Pipe case, was not that contract declared illegal?

Mr. NORTHPROP. It was, for the very reason I have pointed out, and you will find it running through all the antitrust cases. The Addystone Pipe case was an antitrust case, as you will recall, and when the court comes down to that question of freedom of contract it says there is no doubt about the freedom of contract, but that the antitrust law does not offend against the constitutional protection of the freedom of contract, because there was no freedom to make unlawful contracts. I think that is the way it goes.

Mr. STEVENS. I know; but who decides what shall be unlawful?

Mr. NORTHPROP. They have not been very clear about that. The court points to the old *Mugler v. Kansas* case, where they broke up saloons and destroyed property, and they tried to protect themselves under this provision as to the freedom of contract.

Mr. STEVENS. Does not the legislative authority declare what shall be unlawful?

Mr. NORTHPROP. It does, to a certain point, I have no doubt; and then he points out the New Orleans lottery cases, misuse of the mails, and things of that kind; but there is a clear indication in the decisions, and there was an actual decision, I think, in the case of *Allgeyer v. Louisiana*, that where the contract is free of anything noxious or immoral the constitutional protection applies to that contract; but to use Judge Peckham's language, the Constitution does not protect the making of unlawful contracts. What is unlaw-

ful is, of course, largely a matter resting within the authority of the legislative branch of the Government. Nevertheless, as you gentlemen probably know better than I do—because you are better lawyers in every way—the Supreme Court still indicates that there is freedom of contract in open, fair, honorable business which the legislature can not interfere with, and that is protected by the Constitution of the United States. That is, business not like a saloon business, or that of keeping houses that are devoted to nuisances, or running lotteries, or immoral things of any kind, but honorable and proper business. In regard to the suppression of competition and unlawful contracts in the antitrust cases, the court said that the legislature there had spoken and had a right to speak, and that it could not touch that act on any such principle as the protection of freedom of contract; but, on the other hand, there are a vast number of valid, open, fair, honorable business contracts that the Federal Government could not strike down and could not undertake to make for parties without violating that clause of the Constitution which protects freedom of contract.

Mr. BARTLETT. What is the clause of the Constitution which protects freedom of contract?

Mr. NORTHROP. I think they have got it into the fifth or fourteenth amendment, somehow or other, in the case of *Allgeyer v. Louisiana*. They hold that the freedom of contract is a property right and it would be a deprivation of that property without due process of law.

Mr. RICHARDSON. That is it; now you have got it.

Mr. KENNEDY. All contracts against public policy are void.

Mr. NORTHROP. Well, you say all contracts against public policy?

Mr. KENNEDY. Yes.

Mr. NORTHROP. Yes.

Mr. KENNEDY. And public policy is generally declared by legislative enactment?

Mr. NORTHROP. Undoubtedly.

Mr. KENNEDY. If it be true that these bills of lading are generally used as instruments of credit, or largely used as instruments of credit, on which to get credit, ought we not to declare that the issuance of them is against public policy unless the goods are delivered?

Mr. NORTHROP. Well, you first asked me whether or not public policy was not generally declared by the legislative branch of the Government. That is true.

Mr. KENNEDY. Whatever the legislature in its legislative discretion deems to be something that ought to be prohibited, if they pass a law prohibiting it, that fixes what public policy is in respect to that?

Mr. NORTHROP. Yes, as a general proposition; although, of course, in our form of government there are cases where an act of the legislature may be declared unconstitutional. As a general proposition, though, that is correct.

Mr. KENNEDY. The question before us here as a committee is whether or not when these blank bills of lading are put into the hands of your agents they are in a position where they can issue them or not issue them. Of course they have no authority to issue, as the testimony is here, unless the goods are delivered, but suppose they do

issue them; ought the public policy to be that the railroad company which authorizes the agents and puts them in the possession of these instructions ought to be held responsible, or ought other people to lose?

Mr. NORTHROP. The Supreme Court says that other people ought to lose.

Mr. KENNEDY. Under the law that people have to lose?

Mr. NORTHROP. I do not take it that this is a bill to reverse the Supreme Court.

Mr. KENNEDY. They are passing upon existing law. We are considering whether or not there is a necessity for a change in the law.

Mr. NORTHROP. They passed upon it, not on the ground of public policy but on the ground of the law of master and servant.

Mr. RICHARDSON. The law of principal and agent.

Mr. NORTHROP. Yes, the law of principal and agent; but it is very doubtful whether Congress has authority to deal with that problem at all.

Mr. BARTLETT. You do not think that Congress would have a right, as regulating commerce, to say what kind of bill should be issued?

Mr. NORTHROP. I doubt it. I do not think they have a right to make a contract or to change the law of principal and agent, or marriage and divorce, and things of that kind. That was argued to the Supreme Court in the employers' liability case, but they did not decide it. They went off on another ground.

The CHAIRMAN. Is that all?

Mr. NORTHROP. Yes; thank you very much.

Mr. FAULKNER. Mr. Chairman and gentlemen, I did intend to make a few remarks here this evening.

The CHAIRMAN. You are something like the poor; we have you with us all the time.

Mr. FAULKNER. I was just about to say that I would not avail myself of that courtesy.

Mr. NEVILLE. The eastern roads and ourselves had a conference with the southern roads last night, as a result of which we came to certain agreements, and Mr. Andrews will make a statement in their behalf.

STATEMENT OF MR. H. M. ANDREWS, ASSISTANT GENERAL SOLICITOR OF THE ERIE RAILROAD COMPANY.

Mr. ANDREWS. Mr. Chairman and gentlemen, last evening Mr. Farnham and Mr. McCain, of the Trunk Line Association, and myself met with the representatives of the southern and western lines and went over the situation with reference to this bill to some extent, and later met the proponents of the bill, and those changes were made which have been submitted to the committee. Those changes cut out the penal provisions, made section 4 conform as nearly as was thought possible to section 23 of the uniformity commissioners' act, and omitted the alteration clause and substituted section 16 of the uniformity commissioners' act, which is a corresponding clause of the uniformity act, and with those changes made it was our opinion, representing the lines in official classification territory, that the act would not be particularly objectionable to us, because we thought

that we were, in that territory, under the civil liability already. On the other hand, we did not think that there was need for the legislation, and so it was our statement to the proponents of the bill that we would not be in favor of it, nor did we particularly oppose it, but we did not think that there was any particular necessity for the legislation. At the same time we stated to them that it was our understanding that there would be no objection on the part of the western and southern lines to the omission of the penal section. I simply make this statement.

The CHAIRMAN. Why should the penal section be omitted?

Mr. ANDREWS. If what the shippers and the bankers desire is the money or the goods, if they want somebody to stand back of the bill and give them the money in case the goods do not turn up, there does not seem to be any necessity for heaping up penalties and making the carrier liable in such an exorbitant and outrageous penalty as \$5,000 or five years' imprisonment.

The CHAIRMAN. The carrier could not be imprisoned, of course, unless, of course, he was an individual.

Mr. ANDREWS. He could be fined, and if he was an individual he could be imprisoned.

The CHAIRMAN. If you are afraid of your agents acting in collusion, I should think you would want a good penalty directed against them if they did enter into collusion.

Mr. ANDREWS. That brings me to this point, that, speaking for these lines in official classification territory, so far as we are represented here, we would have no objection to inserting in this bill the corresponding provisions from the uniformity commissioners' act. That act has been gone over very carefully by men who have given three or four years' study to this particular point.

The CHAIRMAN. You mean the state bill?

Mr. ANDREWS. Yes, the state bill; the bill that was prepared by the commissioners on uniform laws.

The CHAIRMAN. Would that be applicable?

Mr. ANDREWS. I do not see why it would not. You will find that on page 38. I am speaking entirely of the penalties, the criminal provisions.

Mr. FAULKNER. It is at the end of the state bill.

The CHAIRMAN. Section 5, which I have here, has the same penalties. It is on page 18. I see that seems to be in some cases \$5,000 and imprisonment for five years.

Mr. ANDREWS. I had not finished my statement. The idea that is contained in those provisions we would not have any objection to; but I do think that the fine provided there is exorbitant. I think that ought to be reduced to the ordinary fine that attaches to a misdemeanor.

The CHAIRMAN. "Not to exceed \$5,000" does not mean a fine of \$5,000.

Mr. ANDREWS. I know it does not, but I do not think any necessity for providing such an enormous fine exists. I think the penal provisions, if it was thought wise to include them, would be much more effective if you would reduce the fine to a sum such as ordinarily applies in a misdemeanor case; I think you would be much more likely to get convictions before a jury.

The CHAIRMAN. Of course, really that is a mere detail which the committee would easily understand; but do you think there ought to be no penal provisions in the bill?

Mr. ANDREWS. I do not see any necessity for them, if we are made fully liable. We now make every effort to keep our agents in line, and if they go astray, it is against our positive instructions and in spite of our best efforts.

Mr. WANGER. Would not your efforts aid the action of the agents in many cases?

Mr. ANDREWS. It may very likely be that that would be so. We have no objection to the insertion of this provision from the uniformity act, but you will notice that those penal provisions differ very materially from the provision that is in this present bill; that the carrier in the present bill is included and made liable to the fine. There is no such provision made in this act, and this act has been adopted for legislation by the various States after long and careful study. What I have said is with this idea in view, that we do not believe there is any necessity for this legislation, but if it is deemed desirable in the wisdom of Congress to make it, we think it should conform to the provisions of this bill that has been prepared by the commissioners on uniform laws. That is all I wish to say.

Mr. FAULKNER. Mr. Hayne is here, and he would like to have permission to file a statement in writing, to be put in the record.

The CHAIRMAN. Is he ready to file it now?

Mr. HAYNE. No, sir. It is so very late that I do not feel like imposing on the committee, if I can file a little statement with them later.

The CHAIRMAN. Very well; you may file such a statement and we will put it in the record.

Mr. FAULKNER. Must I file my statement, or shall I talk to you when you have nothing else to do.

The CHAIRMAN. You might talk to us when we have nothing else to do.

Mr. FAULKNER. There are two or three things I would like to call your attention to, but I will not do it to-night under any consideration, out of consideration for you gentlemen.

The CHAIRMAN. We never stop working.

Mr. ANDREWS. May I say one word further? Our action last evening was with the idea that the change in section 4 would make that section correspond to the corresponding section in the uniformity act, that is, section 23; and that brings up the point which the committee has discussed here to-day with reference to the matter of the description of the property, and I had some doubt upon that question last night, as to whether or not that section as it was left would not make the carrier the guarantor of the quality of the property described; and I will confess that those proceedings have increased that doubt in my mind, and have made the question more objectionable from my standpoint, for the reason that the act says: "The carrier shall be liable in damages to the person relying upon the description," in the bill. Now, if he relies upon the description of property in the bill, as 100 barrels of cement when it is 100 barrels of clay—turns out to be that—it seems to me there is grave danger of the act being construed to make the carrier liable, in spite of the provision at the top of the bill of lading by which the carrier receipts for the

property, "Contents and condition of contents of packages unknown." It seems to me there might be a tendency on the part of the courts to brush aside that printed part of the bill and say, "Your injured party in this case has relied upon the numerical description and the quality of the goods."

Mr. WANGER. What is the provision in the state act?

Mr. ANDREWS. That is section 23. It goes into very long detail, you will find.

Mr. WANGER. I have it before me.

The CHAIRMAN. That will be satisfactory to you?

Mr. ANDREWS. Section 23 would be satisfactory to us.

Mr. FAULKNER. Suppose if they would take in the other provisions? You only embrace one clause, as I understand it, of section 23 in the exception, which is the shipper's load and count? The other exception you do not embrace in that amendment to section 4, at all?

Mr. ANDREWS. We do not embrace it because it was the opinion of Mr. Paton and Mr. Farnham that the description of the property as it is in the bill covered the same ground as this long paragraph in section 23, which reads:

If, however, the goods are described in the bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity or in a certain condition, or it is stated in the bill that packages containing the goods are said to contain goods of a certain kind or quantity, or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement was true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt by the carrier or by the misdescription of the goods described in the bill.

The CHAIRMAN. Mr. Paton, section 23 in the state bill is satisfactory to you, is it?

Mr. PATON. We would accept it if we could not have our own provision. That is, the provision as proposed this morning is more satisfactory. We think it covers the case.

Mr. FAULKNER. That covers the last point on the following page. All of those other exceptions are left out; and if it was necessary, Mr. Chairman, to put in this last clause in order to protect these others, this is equally necessary. The one requires no more than the other.

Mr. PATON. The definition of loading and counting is hardly ever required in a description; but in a bill stating that 100 packages have been received, and the contents are unknown, "contents unknown" is a part of the description.

Mr. FAULKNER. Then it is more important to have this in, because we are bound by the description and we are not bound by the other; therefore under your view of it, it is much more essential to have these limitations on.

Mr. PATON. I am perfectly willing to leave that to the sound judgment of the committee. I want to say, in explanation of the

suggestion to omit these penal provisions, we had them in the bill because we thought it was protection to the carriers. In conference with the representatives of the carriers last evening we learned that they were opposed to them, and we assumed that all the carriers were opposed to them. We thought that if the carriers did not want them, those that advance money on the face of the bills are sufficiently satisfied with the civil liability, and therefore in the interest of harmony we will suggest that they go out; but now it appears to-day that the carriers do want them; that they think it is a protection to them.

The CHAIRMAN. You do not care anything about that, so far as you are concerned?

Mr. PATON. No, we do not care about it; but we simply want to explain.

The CHAIRMAN. Is that all?

Mr. FAULKNER. There was another matter that I think ought to be called to your attention on this section that was left in, which is, I think, section 7. They have left the proviso in there in which the carrier is exempt under certain circumstances mentioned in the proviso from producing the property, and is excused from it. I do not like that provision, and I will say to Mr. Paton frankly why I do not. When you require by a statutory enactment a particular duty of an individual or a corporation and then make specific exceptions to the performance of that obligation or duty imposed by statute, you exclude, by construction, all others; and I would therefore very much like him to add there the language used in, I think, the eleventh section of the state act, at the bottom of page 10, "or other lawful excuse for such refusal."

Mr. PATON. There is no objection to that.

Mr. FAULKNER. I would think there could be no possible objection.

The CHAIRMAN. The language is "the existence of a lawful excuse for such refusal."

Mr. FAULKNER. I say, "or other lawful excuse for such refusal."

The CHAIRMAN. Where would that come in?

Mr. FAULKNER. It would come in on line 17, page 6 of the bill.

The CHAIRMAN. That is a suggestion to amend the proviso by an addition?

Mr. FAULKNER. Yes.

The CHAIRMAN. And not by striking anything out?

Mr. FAULKNER. Not by striking out, because then this language of mine would cover all that they would legally have a right to except.

The CHAIRMAN. I noticed in a bill that was sent to me by Mr. Paton or some of the other gentlemen, they had in the lawful excuses "If the shipper was not in lawful possession of the property at the time of shipment."

Mr. PATON. That is where it was taken out of the possession of the carrier by operation of law, by replevin, for instance. That is in the bill now.

The CHAIRMAN. It might not be taken by operation of law; they might give it up.

Mr. FAULKNER. Another suggestion I would like to make to Mr. Paton, as I may not get him again here, as representing these gentlemen, and I look upon this as an exceedingly important one. Before they agreed to strike out section 5 they had inserted what was a new

provision. On page 4, lines 18 and 19, after the word "carrier," is all new in this section, different from the act of last year. Following the word "carrier" on line 18, page 4, the language is all new down to and including the word "issued" in line 19. The new language reads "or of a connecting carrier in course of transit to the carrier whose bill is issued." I think that is a very important provision in this, if it ever should be enacted into law, and that should be transferred to the fourth section, on line 23, page 3, and inserted after the word "carrier."

Mr. PATON. The reason for that is that a connecting carrier might get the goods and telegraph ahead to the connecting carrier, and they would issue a bill on that telegram. We did not want to send the agent to jail for issuing a bill on that telegram, although he had not received the goods; but in the case of a civil liability, if those goods never had reached the issuing carrier, he should stand for it.

Mr. FAULKNER. What are these gentlemen, then, going to do with these fast freight lines and with the terminal lines; how are you going to allow this commerce to be moved as it is absolutely essential that it should be moved, by having these connecting carriers allowed to issue the bills on the strength of the notice from the holding carrier? For instance, take all these belt lines and these terminal carriers.

Mr. PATON. You have the right to do it. You are simply liable.

Mr. FAULKNER. I have not the right if you make the provision that I can not until I have actual possession and control of that property; I then have no right to issue a bill of lading until the property comes into the possession of the carrier I represent.

Mr. PATON. There is no prohibition, only an estoppel.

Mr. FAULKNER. Well, an estoppel; that estoppel is in fact a prohibition to the carrier, absolutely so. Why is it not?

Mr. BARTLETT. The fact that it would be an estoppel would prohibit the carrier from doing it for its own safety?

Mr. FAULKNER. No; it is absolutely essential.

Mr. BARTLETT. I say the fact that you are estopped from denying liability will virtually prohibit you from doing the business, in order to protect yourself.

Mr. FAULKNER. Of course it will. Something may occur between the two intervals that will throw liabilities, and that would then be a matter that could not then be the subject of investigation, and here is an initial carrier carrying this property simply to the fast freight lines which are essential in this country and have been established now for years. The initial carrier gives to the shipper the bill of lading from that carrier, and the shipper at once forwards that to the fast-freight line, and they tell me, these men do, that it saves twenty-four hours in the return of the fast freight shipping line's bill of lading to the shipper, which enables him to go on with his transactions that much earlier. Now, it is the same way with all these belt lines, all these terminal lines, that go around to the manufacturing industries of these cities; just as soon as the car is loaded and they transfer, they give notice then to the carrier on whose line it is to be transferred that the car is there, and to prepare a bill of lading for it, and the bill of lading is prepared at once on the faith that they have in that statement, and when the car comes to their line it makes it all right. But suppose it did not get there; suppose it

was wrecked in getting there; there is an estoppel out and you can not prove it. You can not say that you did it as a matter of absolute necessity in developing and carrying on the great commerce of this country. Is that right? Is it just? Is it necessary for the bankers to have it? Because they may say what they please here, this is not a shipper's proposition, it is a simple, commercial, money proposition that we have got to discuss here.

I would like that amendment to be put over in that 4th section.

The CHAIRMAN. Well, we have that in the hearing, and we will consider that.

Mr. FAULKNER. I did get a word or two in after all. You forced me.

The CHAIRMAN. If we should give the Interstate Commerce Commission full power over that, would not that be a protection to both the shipper and the railroad company?

Mr. FAULKNER. I would suggest, so far as the railroads are concerned, on that proposition that it was better to suspend all action here until we see whether or not your bill or Mr. Townsend's bill is passed, and if either one is passed, it confers on the Interstate Commerce Commission the full power to make any form of bill that the law will permit them to make.

The CHAIRMAN. Of course these hearings are principally for the purpose of determining whether these provisions ought to be in any bill.

Mr. FAULKNER. I say the only question is, it strikes me I would not act on this matter until you determine what you are going to do with those two bills.

The CHAIRMAN. Well, the committee will use its best judgment about those things.

(At 6.45 o'clock p. m. the committee adjourned until to-morrow, Tuesday, February 8, 1910, at 10 o'clock a. m.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

Friday, April 24, 1908.

Committee called to order at 2.30 p. m., Hon. James S. Sherman in the chair.

UNIFORM BILLS OF LADING.

STATEMENT OF MR. HENRY W. TAFT, OF NEW YORK CITY.

Mr. SHERMAN. You may proceed, Mr. Taft.

Mr. TAFT. I only desire to address the committee and to attempt to enlighten them upon one point, because I had some responsibility in having prepared an opinion some time ago upon the constitutionality of this proposed bill, under the provision of the Constitution which prohibits the taking of property without due process of law—that is to say, upon the question of the objection raised that it was an attempt to create a liability, or change a liability, which existed at common law, and thus disturbed vested rights. Upon that question I prepared an opinion, which I see the gentlemen interested in this bill have had printed, and it is attached to a brief which, I believe, has already been submitted.

Upon a hearing before this committee. I think the last hearing, a further question of constitutionality arose, and it is with reference to that that I wish to make a few remarks to the committee. As I have had to make preparation for this upon rather short notice, if it is agreeable to the committee, I will also have a somewhat extended brief upon that point prepared and submitted within two or three days.

Mr. SHERMAN. And I presume within a length of time so that we will have it printed with your remarks.

Mr. TAFT. Yes. The question is a question which was raised at the last hearing, I think by Mr. Stevens, as to whether Congress has the power to deal with the subject which is covered by sections 20 I and 20 J. Those are the sections which deal with the question of false bills—that is, so-called false bills, which do not represent any actual goods delivered to the carrier as they purport to do; and Mr. Stevens, and possibly one or two other members of the committee, raised the question that as there were no goods and as there was consequently no transportation, either intrastate or interstate, therefore there was no basis for federal jurisdiction.

Now, that, at first blush, seems to have some plausibility, and in a discussion before a congressional committee I am not surprised that the question was raised, but I think any doubt will yield to close and careful consideration of the question.

I suppose you gentlemen are entirely familiar with the provision with reference to which I am speaking. It deals with bills which do not represent the whole of the property which they purport to deal with—that is, the section substantially says that a carrier shall be responsible for the whole of the goods which purport to have been delivered to it. Now, that section has got to be considered in two aspects, and in the one aspect it seems to me that there can be no question that it is constitutional.

If the carrier and an intending shipper in good faith enter into a written contract which purports to deal with goods which it says are to be transported to somebody outside of the State from which they are to be shipped, and those goods are actually in existence, and it is actually the intention, both of the shipper and the carrier, that those goods shall be transported, then, it seems to me, that under all of the authorities in the Supreme Court—for I shall only call your attention to such authorities if they seem to be sufficient—that is a transaction preparatory to and for the express purpose of interstate transportation. As it has been repeatedly decided, interstate commerce is not alone transportation, physical transportation, but it deals with all of the work which is preparatory to transportation, and as, I think, Chief Justice Marshall said in one of the leading cases, it is more properly described as interstate "intercourse." Now, it seems to me wholly inadmissible to admit that Congress has not the power to deal with one preparatory phase of a business transaction which has for its ultimate purpose actual, physical, interstate transportation.

Possibly it will be urged by some of those who have different views that it has been held by the Supreme Court—and it has undoubtedly—in tax cases, where a question as to the locality of goods was involved, that the intention of the owner of the goods is not a sufficient basis on which to base a claim that those goods had a legal status in one State and not in another. But that is not my proposition. It is not a question of intention, it has gone far beyond that, and has assumed the phase of a business transaction in which legal rights have arisen with reference to something which is in existence, which may be enforced by one party or the other in accordance with the contract. The shipper, if he has paid the freight charges, can insist upon the transportation of the goods; and the carrier, in case of the ultimate transportation of the goods, can, under that contract, sue for the collection of the freight money. I do not believe that you will find any difficulty as to that phase of the transaction being based upon facts which constitute an interstate transaction, which is a basis for federal legislation.

Perhaps I have occupied more time upon that than was necessary, because the other question which arises is perhaps not so clear under the authorities, although I think there is no doubt upon that; and what I say in reference to the second phase of it applies equally to the first phase of the matter. Suppose—and this is a case which it is attempted to provide for in most of the cases which will arise probably—suppose that at the time when the contract of shipment is made, no goods are in existence—that is to say, suppose that the agent of the carrier and the shipper, the reputed shipper, enter into a fraudulent contract with reference to goods that have no existence. That is the case which I think suggested the question by members of the committee as to whether there was a basis for congressional legislation. Now, does that afford a basis for congressional legislation; is that an interstate transaction within the meaning of the Constitution? Well, if dealt with entirely disconnected from the rest of this bill—that is, as a mere question whether a fanciful and imaginary arrangement has been made for the purpose of defrauding somebody, where there is nothing else on which to base federal jurisdiction—you might have a question about which there might be some doubt, but that

is not this case. You are attempting here to apply a remedy, to provide a means for meeting a certain general situation. You are dealing unquestionably with a question of interstate commerce—that is to say, you are dealing with bills of lading which are symbols of the goods concerning which the parties negotiate.

Now, you go on by this bill and say that those bills of lading, the order bills of lading, shall contain certain things. They shall contain these words: "To the order of;" they shall make certain provisions with reference to the parties; they shall contain certain conditions in relation to transportation with which they purport to deal. You are dealing in that bill with a subject-matter which is interstate commerce under the decisions which I will give you in the brief. The bills of lading with reference to interstate shipments are instrumentalities of interstate commerce, and as such Congress may deal with them. It has dealt with them in the Harter Act, and the Supreme Court in a number of cases has said that it has the power to deal with them, because they represent the kind of a transaction that the Constitution contemplates that Congress shall deal with.

Now, you propose to take that situation; you propose to deal with the question of interstate commerce represented by these bills of lading. You make certain provisions as to what they shall contain, with the obvious purpose of eradicating an evil and putting this business upon a safe and harmonious basis. That is interstate commerce. In your discretion you say: We can not adequately provide for that interstate commerce; we can not adequately provide for the scheme proposed to be enacted here without protecting people who get that kind of bills of lading against abuses, without protecting the interstate commerce which is usually represented by these bills of lading against fraud by having false bills of lading issued, which purport to represent that kind of commerce but as a matter of fact do not.

Now, you will find that from the earliest days it has been held that Congress may not only deal with a particular transaction which is interstate commerce, but may deal with any other fact which in their judgment bears upon that transaction, whether directly or indirectly, and if you think that this arrangement of interstate commerce, through the safeguards provided in the earlier sections of this bill, require that it shall be further protected by creating this liability upon false bills of lading, then, in my judgment, your discretion can not be reviewed by the courts. It is for you to determine whether that subject is so involved in the other as to require that you should deal with it, and if you think so, that makes it constitutional.

Now, I did not want to deal with cases, but from the earliest day, under the doctrine of implied powers, that sort of thing has been dealt with. The leading case upon the subject, you will recall, dealt with the provision of the Constitution which authorizes Congress to establish post-offices, and Chief Justice Marshall said that it was to be implied from the provision of the Constitution that Congress should have the power to establish post-offices; that they would likewise have the power to maintain post-offices and transport mails from office to office. That is all implied out of the provision merely to establish post-offices. And not only that, the further implied power which he recognized comes closer to this, because it was out of that provision alone that he said the power was to be implied of punishing, under the federal law, a person for stealing a letter out of the post-office or for robbing the mails. Of course, such an act as that is essentially a local act, and presumably could be adequately punished under the state law, but yet he held, and there have been many cases of a similar character that have been decided since, that if the "beneficial exercise"—I think that was his exact expression—of the constitutional power requires that matters that have some indirect connection with it should be dealt with by Congress, Congress has the power to deal with them.

Now, to sum up, in the first place, there is not any question, in my judgment, that these sections are constitutional in so far as they may be held to deal with a case where the two parties in good faith deal with reference to the goods which are in existence, and which are delayed in delivery to the carrier, and subsequently are not delivered, because that transaction itself, quite apart from the question of actual physical transportation, is an interstate transaction and subject to the jurisdiction of Congress. And, second, in the other case where the goods do not exist, and the fraud is attempted to be perpetrated, Congress has the power to deal with it. I think I ought to say, in closing, that you can not expect that every exercise of power by Congress is going to be supported by some provision of the Constitution which deals specifically with it. That is impossible. But here seems to be a case where Congress would not be strain-

ing a point very far if they assumed that they had the power to deal with this situation, particularly if they believed that in their discretion these two sections need to be inserted in this bill in order to make it harmonious and complete and beneficial to accomplish the purposes expressed in the early section of the bill.

Now, I do not wish to go on any further; but if any gentleman wants to ask me any questions regarding my view of any phase of this matter I will be very glad to answer it, because I have given this general subject a good deal of consideration in the past and have studied this particular question to some extent.

Mr. KENNEDY. Your contention, Judge, is, then, that if in our legislative judgment we think that this bill should pass, of course we would only pass it with the idea that it would be of great benefit to interstate commerce?

Mr. TAFT. Comprehensively.

Mr. KENNEDY. And in order to have the legislation beneficial to interstate commerce it would have to have something in the nature of a penalty to make people, railroads, and shippers make true and honest bills of lading?

Mr. TAFT. Interstate bills of lading; otherwise it would interfere with the general purpose.

Mr. KENNEDY. Then the creation by law of this liability could be supported on the theory that the liability would be in the nature of a penalty for issuing a false bill of lading?

Mr. TAFT. Yes; and there is also, I think, provided a civil liability by that section; it is double.

Mr. KENNEDY. It does provide a civil liability. The civil liability would be abundantly sustained upon the doctrine that we had the power to create a penalty.

Mr. TAFT. Quite true. It is only a question as to whether you think that, connected with the general subject, those things ought to be provided in order to make your general purpose fairly effective.

Mr. KENNEDY. I would like to ask you a question that does not relate specifically to this bill; but in the legislation that has been formulated in this committee we have been very careful, and have uniformly put words into such legislation limiting our regulation to railroads which run from one State to another.

Mr. TAFT. Yes; that is right.

Mr. KENNEDY. There is no question about that; but I would like, if it would not involve too long a discussion, to ask you your opinion as to whether or not you think a railroad, regularly chartered, entirely within a single State, is not an interstate carrier?

Mr. TAFT. Well, it may be. In this case it may be: Suppose a railroad makes a contract with a shipper to transport goods to a point which is outside of the State, but part of the route is over another line. If it makes a contract, it assumes to see that those goods are delivered beyond the state line, I think that that will be held to be within their corporate power, and that in that case they will be held to have made an interstate contract, even though the physical act of transportation over the entire line was not performed by them.

Mr. SHERMAN. That is, so far only as the transaction is concerned covered by the contract?

Mr. TAFT. Covered by the contract, of course. Now, you have got to separate in some cases, and I think you do wisely in these bills, to express so far as it is practicable the idea that you are dealing with interstate commerce, because the omission to do that is the ground on which the Supreme Court has upset the employers' liability act. There, while they held that that act, so far as it related to railroads which at the time of the creation of the liabilities were engaged in interstate commerce, was valid, yet they said it was not expressly confined to that, and it was so mixed up with a provision which might imply intrastate transactions that they could not undertake to make a separation, and they held the law to be unconstitutional there. But I ought to say, before I drop this other subject—I forgot it at the moment, and it was referred to in one of the former hearings—but it has been held, and this will be made the basis perhaps for an argument the other way, that contracts of insurance, even though they relate to interstate transactions, are not, in themselves, interstate contracts.

Now, I think that the distinction is quite clear. In the Hooper case the Supreme Court held that a contract of marine insurance was not an interstate transaction, upon the ground that it was too remote, and was merely incidental to the transaction. Now, while a contract of insurance is a customary protec-

tion for a shipper to take, it is not involved directly in the interstate transaction itself; it is not one of the conditions upon which the interstate transaction is undertaken, and I think that the distinction is clear. A promissory note which is given in payment of an obligation incurred in an interstate transaction no doubt would not itself be subject to the jurisdiction of Congress, because it is incident to it, and the line must be drawn somewhere.

Mr. KENNEDY. Merely incident to it, and not necessary.

Mr. TAFT. Yes; it must be drawn somewhere. And it is, in a certain way, a matter of degree. But whereas in this case you are dealing with the question of the conditions under which the interstate transportation is undertaken, then I do not think you go beyond your discretion in dealing with every phase of that operation, and not dealing with each individual instance. You are dealing with an operation of interstate commerce, and you have a right to deal with it comprehensively.

Mr. SHERMAN. In the light of the decision in the employers' liability act, how are you going to avoid the possibility of a decision in a case like this, where you hold a road which is physically intrastate to be legally interstate?

Mr. TAFT. Well, you do, in this bill, specifically limit its operation. In sections 20 A and 20 F, which are general sections, you do provide that all of the shipments referred to are the shipments which are made from a point in one State to a point in another State, and from a point in the United States to any foreign country. Now, that limits the scope of this act; that is to say, so far as its main purpose is concerned; that is the character of the commerce which you are attempting to deal with.

Now, the question as to whether something which you also deal with may happen in a single State, commerce does not make that foreign to this general subject of interstate commerce if it directly affects this interstate commerce. There are a great many transactions that take place within a particular State which, however, have a bearing upon interstate commerce, and those are always held to be within the power of Congress.

I will submit a little memorandum upon this so that you can have my views, and will send it over early next week.

Mr. NEVILLE. Would not the fact of an intrastate road issuing a bill of lading to a point out of the State, and where a through rate of freight is mentioned from the point of origin on this road to the destination on a connecting line—would not that make that intrastate road on that particular shipment an interstate road?

Mr. TAFT. Yes; it would, as I said a moment ago.

Mr. SHERMAN. An interstate transaction, but not an interstate road?

Mr. TAFT. Oh, no. You have power to deal with an interstate transaction; indeed, you have power to deal with more than an interstate transaction. What you have the power to deal with under the Constitution is interstate commerce. Interstate commerce involves a variety of subjects, many of which are completed right in a single State, and this is one of that character of transactions, and it becomes a part of interstate commerce because of its connection with the intercourse between the States.

Mr. SHERMAN. To illustrate, give us a concrete example of a transaction that is completed within a State and yet is a transaction in interstate commerce.

Mr. TAFT. Before I do that I want to read this language from the employers' liability act, and I extracted it because I thought it in a general way applied to this situation. I think this was Justice White's language: "The test of power is not merely the matter regulated, but whether the regulation is strictly one of interstate commerce." That is, it is not the mere physical transaction with which the specific law deals, but it is a question as to whether that specific transaction affects interstate commerce.

Now, you asked me about something which happened within a State, and which is so connected with interstate commerce as that it becomes a part of interstate commerce.

Mr. LOVERING. Right there, and along that line, I would like to ask you if the matter of compressing of cotton within a State comes under our authority.

Mr. TAFT. I should think if it were a matter of manufacture—

Mr. LOVERING. I mean the compressing of cotton.

Mr. KENNEDY. That is, to put it in shape to be hauled.

Mr. TAFT. If it is the process of manufacture—

Mr. LOVERING. No; not manufacture, but it is compressed for the purpose of transporting the cotton.

Mr. TAFT. I do not think so, Mr. Lovering. I think if that is the entire act, and it is completed, and it does not relate directly to the matter of its shipment or transportation, and it is completed within the State—

Mr. LOVERING. It is done by the railroad for their own purposes, in order to put a great deal of cotton into the least space.

Mr. TAFT. Do you mean that that is subsequent to the contract for shipment, and is a part of the contract for shipment?

Mr. LOVERING. I buy a hundred bales of cotton at a compress to be shipped to my mills, and that cotton will be stopped in transit within the State, and will be put on board of one car instead of two cars.

Mr. TAFT. Then if that is directly connected with convenient transportation, and is done by the railroad as a part of the transportation, I think it is. I think probably it would be regarded as a condition of transportation, and if it started on an interstate voyage, then it would be.

Mr. LOVERING. I am glad to have that established.

Mr. TAFT. But my own opinion does not establish it. Now, you will find that the Supreme Court, in another class of cases—Judge Peckham, in one of his decisions, I can not tell just which one it was—pointed out a lot of things which would not be interstate commerce, for instance, on a shipment of cattle. Suppose a railroad established a place where it watered cattle, some place within a State. He said that that would not be interstate commerce. The local arrangement made there and the contracts with reference to them would not be interstate commerce. And you will find in that decision—I can not remember at the moment which one it was, but I think it was one of the Kansas City Stock Yard decisions—that he mentioned a lot of things that would not be interstate commerce, and I remember that particular one.

Mr. SHERMAN. What did he mention that were transactions of interstate commerce? That is what I am trying to get at.

Mr. TAFT. I will tell you one, the Northern Securities case. There was the organization of a New Jersey corporation, and the acquisition of property by a New Jersey corporation, the property being the stock of the Northern Pacific Railroad and the Great Northern Railway; and the main ground of defense there was that that was a transaction which took place under the laws of the State of New Jersey, related only to the acquisition by a corporation of the State of New Jersey, and if it was valid under the laws of the State of New Jersey, it could not be questioned under the laws of the United States, and was not subject to the prohibition of the antitrust law; and the court said, "No, that is not so." Technically it was valid under the laws of the State of New Jersey, but the purpose of it was, by a device which technically was legal, to accomplish secondarily the purpose of violating the interstate commerce law in suppressing competition among the States.

Mr. SHERMAN. And I think the Supreme Court was right in that case; but I was attempting to ascertain some concrete case relating to a shipment concluded, as I understood you it might be, within a State, and where that was part of an interstate transaction. Maybe I misunderstood you—

Mr. TAFT. No; you understood me correctly, and you wish to have some concrete case which has been the subject of adjudication, I suppose?

Mr. SHERMAN. I would prefer it. But have you not something that occurs to you now, in your judgment?

Mr. TAFT. Well, the courts have held in three or four cases, and I have those decisions here, that a bill of lading is complete within the States; the contract is complete within the State, and yet it is an instrumentality which relates to an interstate transaction—

Mr. SHERMAN. But that is not a transaction that is concluded within a State, however.

Mr. TAFT. But the contract is concluded within the State.

Mr. SHERMAN. The contract itself is, but the carriage is not.

Mr. TAFT. No; the carriage is not—well, I do not know that I can mention offhand a case, but I can, if you would like to have such an illustration, send you—

Mr. KENNEDY. The courts have recognized that a shipment from one State to another wholly within a State, the railroad not passing outside, is intrastate.

Mr. TAFT. No doubt about that; it could not be otherwise; but if it is a part of a journey beyond the line of a State, then the situation would be different.

Mr. KENNEDY. Do you not think that under our power to regulate interstate commerce we have the power to punish and stop anything that is injurious to interstate commerce?

Mr. TAFT. That is a pretty broad question, because it is a question of degree.

Mr. KENNEDY. Of course, it means seriously to impede interstate commerce.

Mr. TAFT. Yes.

Mr. KENNEDY. Suppose that the State of Pennsylvania and the coal-carrying roads that carry coke from Connellsville territory to Pittsburg would put such a rate upon coke coming from Connellsville to Pittsburg as to practically stop it from coming, stopping those manufactories that are manufacturing and largely supplying, creating, we might say, a large proportion of the interstate commerce of this country. Suppose that the legislature of the State of Pennsylvania, cooperating with those roads that are wholly within a State, put such an embargo upon that traffic as to stop it. Would it not be within our power to interfere there?

Mr. TAFT. I think the Chesapeake and Ohio case would come close to your question, a case which I think was decided in the fourth circuit. There the owners of coal mines entered into an agreement for fixing the price of what they call "western shipment coal." There was not any particular transportation in contemplation at the time, but they agreed that they would not sell coal for western shipment under a certain price. They held that that was a violation of the antitrust law, because it necessarily involved the transportation of coal across the State line when they came to transport it. But there was not any contract in existence at the time. That is your case exactly, is it not?

Mr. KENNEDY. I may be a little extreme; I think I am; but I believe we ought to amplify our jurisdiction in matters of interstate commerce, and I think we have complete power to stop anything that is generally injurious to interstate commerce.

Mr. TAFT. Well, you have to draw a line somewhere. In the Kansas City Stockyard cases, they held that contracts which were made by the members of the stock-yards associations with reference to commissions, and so on, were not so connected with interstate commerce as to be a violation of the antitrust law.

Mr. SHERMAN. Mr. Taft, I do not think that your answer to Mr. Kennedy's question is an answer to the question which I asked a while ago.

Mr. TAFT. Perhaps it is not. I only said that it came closer than perhaps any other case that I mentioned. I do not offer it as an answer to your question, because I do not think that your question is at all—this is my judgment—conclusive of the proposition, because you are attempting to define, by some particular instance, what ought not to be limited by any such narrow definition. The question is whether a thing which is done within a State is so involved in the whole subject of interstate commerce that it shall affect it in such a way as to bring it within the constitutional powers of Congress. Now, here is a case that just occurs to me—I have not examined it in connection with this matter—but in the case of *Montague v. Lowry*, which I think possibly comes closer to your question, there was an agreement among the manufacturers of tiles outside of the State of California (this was under the antitrust law) and the dealers in tiles in the city of San Francisco under which only the members of that association could get tiles at certain prices. There was a retail dealer in the city of San Francisco who wanted to purchase tiles, and could not, from somebody in San Francisco, a dealer from whom he was accustomed to purchase tiles there. Now, the only transaction he was connected with was a purchase at retail of tiles within the city of San Francisco. The point was made in that case that that transaction was wholly an intrastate transaction, and the Supreme Court held that it was so involved in the scheme which dealt with interstate commerce as that it was a subject for federal jurisdiction. That comes closer to your proposition, does it not?

Mr. SHERMAN. Yes; it comes closer.

Mr. TAFT. In that case of *Montague v. Lowry*, that is the other end of the line; that is the reverse. It is where the transaction was the result of an interstate transaction. Now, of course, when you come to the question of manufacture, you get a clear distinction; that is, in the Knight Sugar Trust case. There, if there is manufacture which is complete in the State, an acquisition which is complete within the State, even though it may secondarily affect interstate commerce, is not itself interstate commerce. That has recently been held in New York again. But in the case of *Montague v. Lowry*, it illustrates quite well the way in which a local transaction may be connected with a general scheme of interstate transactions so as to make it cognizable in the federal courts, and, of course, by Congress.

Mr. TOWNSEND. You are familiar with the decision recently in relation to the railroad laws of Minnesota and North Carolina, are you not?

Mr. TAFT. I would not attempt to say that I was entirely familiar with them.

Mr. TOWNSEND. I am not, and I did not know but that you were.

Mr. TAFT. No; I have not had occasion to examine them.

Mr. TOWNSEND. What do you understand was involved in those cases?

Mr. TAFT. I do not really know which cases you are referring to.

Mr. ESCH. The 2-cent rate cases.

Mr. TAFT. Oh, well, that was a question of jurisdiction of the Federal court as against the State court. That was a conflict of jurisdiction, and I do not think this particular question was involved there.

Mr. TOWNSEND. No; I do not think it was directly.

Mr. TAFT. That was a question, if my recollection serves me rightly, as to whether a state court could, where it had jurisdiction primarily, be restrained by a federal court from acting in reference to a matter which might involve a question under the Federal Constitution—might, in the last analysis, involve that question. But that is not this question.

Mr. HUBBARD. Coming back to the immediate question you have argued, and which has been suggested at this committee table, we could legislate with respect to bills of lading whether there was in fact no goods shipped?

Mr. TAFT. That was the question.

Mr. HUBBARD. I understood you to make two replies to that; first, that, although no goods may in fact be shipped, yet the transaction in giving that bill was one of a preliminary nature, and that it could be considered as coming under the commerce clause, but that there was no transaction if there was no real shipment made. Would not, then, the preliminary transaction, which was preliminary to something in fact that did not occur, come within that clause?

Mr. TAFT. It seems to me not. The courts have held that it is not transportation that limits the power of Congress, it is intercourse. They have repeatedly held that it is a broader thing than mere transportation.

Mr. HUBBARD. Are you not, then, in the position of claiming that a bill of lading merely as a contract, and without reference to what it stands for, constitutes interstate commerce just as a bill of insurance is a contract relating to goods?

Mr. TAFT. Well, as I said before, the difference between the two cases is the degree of approximateness to the contemplated transaction, the contemplated interstate commerce.

Mr. HUBBARD. There is a difference in their distance; but they are both distant from it?

Mr. TAFT. Well, one is so connected with the transaction itself—is one of the conditions of the transaction—as to be.

Mr. HUBBARD. In the case that was put at the committee table there is no transaction with which the bill of lading is in fact connected; there was no shipment, no goods represented by the bill of lading.

Mr. TAFT. I quite agree with you, and I am prepared to admit—

Mr. HUBBARD. I am not sure that I am agreeing with the conclusion drawn.

Mr. TAFT. I understand, but I do not want to be misunderstood, because I want to be somewhat responsible for my view upon the subject. If you took up a disconnected matter, the question of a false bill of lading, and said that every false bill of lading which purported to deal with an interstate-commerce transaction created a certain civil liability, and should be made the subject of a penal provision, I should say that it was very doubtful whether the mere designation, by fraud, in the body of the bill of lading, of the route as being an interstate route, would bring it within the jurisdiction of Congress. I do not mean to contend that the mere fact of the two fraudulent persons in a State putting up a scheme for issuing false bills of lading, purporting to evidence an interstate-commerce transaction, that that would make it an interstate-commerce transaction. But my point is that if you deal with a body of that kind of transactions—

Mr. HUBBARD. With a general subject?

Mr. TAFT. With a general end in view, of making your provisions effective as to all kinds of interstate business, and say that any bill of lading which relates to that kind of business, but which is false, shall be the occasion of certain liability, and in your judgment the subject needs that kind of protection—that is, that interstate commerce needs that kind of protection—then I think it is within the power of Congress.

Mr. HUBBARD. That seems to bring out clearly the distinction between your position and that which might be implied from the questions put the other day at the committee table. The question seems to be based upon the idea that commerce was an aggregate of individual transactions, and that if one of those individual transactions failed the bill which ostensibly was based upon it would not therefore relate to interstate commerce, while on the other hand, considering interstate commerce as a general subject—

Mr. TAFT. This part of it.

Mr. HUBBARD. Of course, and not merely as an aggregate of individual transactions, the dropping out of any one of which would leave outside the jurisdiction the bill of lading based upon it.

Mr. TAFT. Exactly so. There is a case which is quite pertinent to your inquiry with reference to the jurisdiction of Congress in relation to these things. It was one of those stock-yard cases out in Kansas City where the Supreme Court said that interstate commerce was not the mere physical handling for a transportation of the object delivered to the carriers, but that it comprehends intercourse for the purpose of trade in any and all of its forms, including the transportation, purchase, sale, and exchange of commodities between the stations of the different States, and that the power to regulate it embraces all the instruments by which such commerce may be conducted.

Mr. HUBBARD. That is based upon commodities, but in the case suggested at the committee table there were no commodities.

Mr. TAFT. This is not limited to commodities; that is only one expression: "Commerce in its simplest signification"—

This is from *Gibbons v. Ogden*, which is one of the leading cases—

Mr. HUBBARD. And it was in that case that the Chief Justice held that it was "intercourse?"

Mr. TAFT. Yes.

"Commerce in its simplest signification means the exchange of goods; in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation."

And it was in that same case that Chief Justice Marshall said that commerce is "intercourse" and is regulated by the prescribed rules for carrying on that intercourse. And in the *Northern Securities* case the Supreme Court said:

"That commerce among the several States is a unit, and it is not some isolated transactions which go to make it up."

Mr. HUBBARD. Nor the sum of the isolated transactions?

Mr. TAFT. No; the test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce.

Now, I do not need to say that this is a question upon which plausible argument might be made on the other side, but it is not a question, and there is not so much doubt about it in my judgment that Congress ought to hesitate to enact this provision if they think it is necessary, in their discretion, to accomplish the general purpose of this legislation.

Mr. SHERMAN. Is there some memorandum that you are going to leave?

Mr. TAFT. No; I have not got it in shape; but early next week I will send over a little memorandum.

Mr. HUBBARD. And cite such cases as you have referred to?

Mr. TAFT. Yes; I shall take occasion to cite a few more, in view of this discussion, because they may be useful to you.

[Sixtieth Congress, first session. Before the Committee on Interstate and Foreign Commerce.]

Brief as to the power of Congress under the Constitution to enact section 20-i of the bill H. R. 14934, to amend an act entitled "An act to regulate commerce."

Section 20-i of the proposed bill prohibits the issuance of a bill of lading until the whole of the property described therein shall have been actually received by the carrier. It further provides that "the issuing carrier shall be liable to any bona fide holder for value of any bill of lading issued by such carrier or his agent in violation of the provisions of this section, who may be injured thereby, for all damages, immediate or consequential, arising therefrom."

The question has arisen as to whether these provisions are within the power of Congress under article 1, section 8, of the Constitution, which provides

that Congress "shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes." The doubt implied in this question is based upon the suggestion that until the property mentioned in a bill of lading has been delivered to the carrier interstate commerce can not begin and the entire transaction will be local and subject only to State jurisdiction.

Two classes of cases may arise in which the proposed section 20-i would be applicable. These are, (1) where the agent of the carrier and the shipper enter into a contract of transportation by the delivery and acceptance of a bill of lading describing goods which are in existence but have not been actually delivered to the carrier, and the transportation of which the carrier and the shipper in good faith expect to be undertaken in accordance with the conditions of the bill of lading, and (2) where, for the purpose of creating a fraudulent instrument on which to procure credit, a bill of lading is issued by the agent of the carrier to the nominal shipper describing goods which have no existence. If Congress has, under the Constitution, power to deal with either of these classes, it would be justified in enacting section 20-i.

1. Where the carrier and the shipper enter into a legal contract for the shipment of goods which are in existence, although not actually delivered to the carrier, an act has been done preliminary to actual interstate transportation and is one of the steps generally preliminary thereto. While it is true that the goods are not in the physical possession of the carrier, the legal rights of the carrier and the shipper with reference to them have been definitely fixed. The shipper, on the one hand, could compel the carrier to transport the goods or recover damages for its failure so to do, while on the other hand the carrier could enforce his right to collect the freight charges. Thus the interstate character of the transaction is dependent not alone upon the intention of the parties, but a step has been taken which usually precedes every shipment across the state line and has a definite legal significance. By the delivery of the bill of lading the carrier, for the purposes of transportation, has constructive possession of the goods.

Interstate commerce is not the mere handling, in the physical sense, of the object delivered to the carrier. "Commerce in its simplest signification means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation." (*Gibbons v. Ogden*, 9 Wheat., 229.) And in the same case Chief Justice Marshall said that commerce was "intercourse" and "is regulated by prescribed rules for carrying on that intercourse." Furthermore, commerce among the several States is a "unit" (*Northern Securities Case*, 193 U. S., 336), and "The test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce." (*Employers' Liability Cases*, 207 U. S., 463, at p. 495.)

Acts which are appropriate and necessary although preliminary to actual transportation among the States have always been regarded as being themselves of an interstate character and as within the power of Congress to regulate. This has been held particularly with reference to bills of lading, because they are instrumentalities of the commerce to which they refer and, therefore, subject to regulation by Congress (*Almy v. State of California*, 24 Howard, 169; *Fairbank v. United States*, 181 U. S., 283; *Hopkins v. United States*, 171 U. S., 578; *The Lottery Case*, 188 U. S., 321). The power to regulate commerce comprehends "all the instruments by which such commerce may be conducted" (*Hopkins v. United States*, 171 U. S., 597). Congress has already, in the Harter Act (February 13, 1893), exercised the power now questioned. That act, among other things, provides that a bill of lading shall be prima facie evidence of the receipt of the goods described therein. It has been several times before the Supreme Court, and its constitutionality has never been questioned (see *Isola di Procida*, 124 Fed. Rep., 942).

In *Swift & Co. v. United States* (122 Fed. Rep., 531) Judge Grosscup said that commerce included—

"the intercourse—all the initiatory and intervening acts, instrumentalities, and dealings—that directly brings about the sale or exchange. * * * The whole transaction from initiation to culmination is commerce. * * * But it is not transportation that constitutes the transaction interstate commerce."

2. The question whether the second class of cases, where no transportation takes place or is intended ever to take place, comes within the constitutional

power of Congress can not be answered without considering (1) the general purpose of the proposed legislation, and (2) whether the provisions of section 20-*i* are appropriate to accomplish that purpose and not so remotely connected with it as to be merely incidental.

Speaking of the power of Congress under the commerce clause of the Constitution, Chief Justice Marshall, in *McCulloch v. State of Maryland* (4 Wheat, 421), said:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

The proposed bill contains a variety of provisions concerning bills of lading all relating to shipments "from a point in one State to a point in another State * * * and from a point in the United States to any foreign country" (secs. 20-*a*, 20-*f*).

The obvious purpose is to regulate interstate transportation by defining rights arising under bills of lading which contain the regulations and conditions under which such transportation is undertaken. It would be entirely inadequate to such an end to deal only with those cases where transportation was directly involved and not with those cases where it was indirectly affected. Federal jurisdiction is not to be determined by inquiring whether there has been, in a particular case dealt with by Congress, actual transportation across the state line, but by considering whether interstate commerce as a whole is beneficially regulated.

The proposed bill assumes the existence of a carrier engaged in interstate traffic and establishes rules for the regulation of commerce directly connected with such traffic. It does not contemplate particular interstate transactions, but only the whole body of the commerce of which such transactions form a part. Congress may well believe that it can not adequately regulate that portion of interstate commerce represented by order bills of lading unless it also prohibits the issuance of similar instruments, which purport to represent such transactions but actually do not. The provisions as to false bills do not, therefore, assume an interstate character by virtue alone of the subject-matter with which they purport to deal, but also because, in the opinion of Congress, their issuance interferes with the adequate regulation of a body of other transactions which do have such interstate character and with the orderly regulation of which they are inextricably involved.

Upon the hearing before the committee, the acting chairman asked whether the principle claimed to be applicable in the present case had ever been applied by the courts where the specific act upon which federal jurisdiction was based was done wholly within a State. In response to this question it is sufficient to refer to the following cases:

In *Brennan v. Titusville* (153 U. S., 289) the federal jurisdiction was based upon the act of a drummer within a State soliciting a person to purchase his goods.

In *Swift & Co. v. United States* (196 U. S., 375) a combination of dealers in meat was held to be an illegal combination within the meaning of the antitrust act. In some cases the prices regulated by the combination were for cattle which had not been brought from another State and for meat to be sold and consumed within a State. It is said in the head note: "It does not matter that a combination of this nature embraces restraint and monopoly of trade within a single State if it also embraces and is directed against commerce among the States."

In *re Debs* (158 U. S., 564), Debs and others during the strike in Chicago, of 1894, committed certain acts within the State contrary to the terms of an injunction forbidding all obstructions to interstate commerce or the carrying of the mail. It was held that they obstructed the mails and interstate commerce and were therefore within the federal jurisdiction.

In *Montague v. Lowry* (193 U. S., 38), an association was formed by various manufacturers of tiles whereby the members agreed to make no purchases from manufacturers who were not members of the association and to sell no tiles to anyone not a member except at prices 50 per cent higher than those established for members. The plaintiff, a dealer in California, where the association was formed, but who was not a member, was unable on account of the combination to purchase tiles. He brought action under section 7 of the antitrust act to recover treble damages. A judgment in his favor was sustained.

Justice Peckham said:

"It is urged that the sale of unset tiles provided for in the seventh section of the by-laws is a transaction wholly within the State of California, and is not, in any event, a violation of the act of Congress which applies only to commerce between the States. The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. * * * The whole thing is so bound together that when looked at as a whole the sale of unset tiles ceases to be a mere transaction in the State of California and becomes part of a purpose which, when carried out, amounts to and is a contract or combination in restraint of interstate trade or commerce."

In *United States v. Coombs* (12 Peters, 72) a federal act imposing a penalty for thefts of goods belonging to vessels in distress, although such thefts were committed above high-water mark and within state jurisdiction, was held a proper exercise of the power to regulate interstate commerce.

In *McCulloch v. State of Maryland* (4 Wheaton, 316) Chief Justice Marshall held that from the power "to establish post-offices and post-roads" there was to be implied the power not only continuously to maintain the post-offices and carry mail along post-roads but also to punish those stealing letters from post-offices or robbing the mail, on the ground that this construction was "essential to the beneficial exercise of the power." The physical act of stealing a letter in a post-office within a State is, of course, purely local, and does not relate directly to an interstate transaction.

See, for other illustrations, *Veazie Bank v. Fenno* (8 Wallace, 533); *United States v. Rio Grande Irrigation Co.* (174 U. S., 690); *Welton v. State of Missouri* (91 U. S., 275); *Robbins v. Shelby* (120 U. S., 489); *Addyston Pipe and Steel Company v. United States* (175 U. S., 211).

The conclusion which I have reached is not affected by the principle of the decision of the Supreme Court, which holds that such instruments as policies of insurance issued in respect of goods which are the subject of transportation from State to State or to foreign countries do not involve interstate commerce. In *Hooper v. California* (155 U. S., 648) a contract of marine insurance was involved, and Justice White said that the distinction between that and an instrument of interstate commerce was based upon the fact that the former was one of "the mere incidents which may attend the carrying on of such commerce." Bills of lading, however, representing transportation by carrier from State to State, are not merely incident to such intercourse but constitute one of the means by which such intercourse is conducted. Policies of insurance upon goods in course of transportation, on the other hand, are not directly connected with the interstate nature of the transaction. While they usually attend such commerce they do not constitute a condition upon which it is undertaken. Their connection, therefore, is too remote to be of Federal cognizance. (See upon this point *Judson on Interstate Commerce*, sec. 7.)

For these reasons there is no substantial ground to doubt that section 20-i of the proposed bill is within the power of Congress. But even if this is not entirely clear, and yet in its legislative discretion Congress believes that the general purpose of the proposed legislation can not be effectively or beneficially accomplished without the enactment of the section, it should exercise its power and devolve upon the courts the responsibility of declaring upon the constitutionality of its action. It should not omit to take appropriate action merely because the Federal courts have not adjudicated upon an exactly similar case or because no express provision of the Constitution can be pointed out on which to base the exercise of power. As Justice Miller said in *ex parte Yarbrough* (110 U. S., 658), Congress should not yield to "the old argument often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises the advocate of the power must be able to place his finger on the words which expressly grant it." If there be a real doubt of the power of Congress as to but one of many features of a general scheme of beneficial legislation, it should resolve that doubt in favor of the theory that that power exists.

HENRY W. TAFT.

APRIL 25, 1908.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XIII

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, February 8, 1910.

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. General Gordon, you may proceed.

STATEMENT OF HON. GEORGE W. GORDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE.

Mr. GORDON. Mr. Chairman and gentlemen of the committee, I asked to be heard very briefly upon the House bill 3064. The purpose of this bill, as stated in its caption, is to require railroads, transportation companies, and other common carriers engaged in interstate commerce to make prompt acknowledgment and adjustment of claims for overcharge on freight and for loss and injury to the same.

I do not know how I can give you a better understanding of the bill than by reading the preamble and the bill, both of which are short. I will read:

Whereas railroads, transportation companies, and other common carriers engaged in interstate commerce usually require the payment of charges assessed on freight before the delivery of same; and

Whereas these railroads and common carriers, when claims are made upon them for overcharges on and for loss, damage, or injury to property committed to their care, frequently and unjustly delay the acknowledgment and adjustment of such claims, extending the months into months and sometimes into years, thereby subjecting claimants to unnecessary and unwarrantable inconvenience and loss: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all railroads, transportation companies, and other common carriers engaged in interstate commerce are required, and it is hereby made their duty, to acknowledge within ten days receipt of all claims which are presented or filed with said railroad or common carriers for overcharges on freight, or for loss, damage, or injury to same while in the possession of said carriers or connecting lines; said receipt to specify the number of said claim and date filed.

SEC. 2. That said railroads and common carriers are also required, and it is made their duty, to pay all just and lawful claims within ninety days from the date of filing same with said railroads and common carriers, and failing so to do they shall be liable to the penalties hereinafter imposed.

SEC. 3. That the failure to acknowledge such claims as is required in section one hereof shall subject such railroads and common carriers to a penalty of one per centum on the amount of such claim, and the failure to pay, as required in section two of this act, shall subject them to a further penalty of ten per centum. Both of these penalties and also reasonable attorney's fee and such other costs as may be necessarily incurred in the collection of said claims by suit shall be included in the judgment for said claims when recovered in any court in which suit may be brought.

SEC. 4. That this act shall be enforced and take effect from and after its passage.

The committee will see, then, that there are only two things required of the railroads in this bill, which seems to be a very reasonable one, and those two things are that they shall acknowledge the receipt of all claims filed for overcharges or for loss of property committed to their care or for injury of property committed to their care, and they shall acknowledge the receipt within ten days. Then, after the claim is established, either by a court or by their acknowledging the justice of the claim, they shall pay that claim within ninety days. This is nothing more than the ordinary requirement of business between citizen and citizen, to be applied now between these common carriers and their patrons or customers.

Now, in support of my application to this committee to recommend this bill for passage, I will ask you to be patient with me for a moment while I read a brief opinion of the Interstate Commerce Commission bearing directly upon the first item in this bill, that is, for overcharges. It does not speak in this opinion of loss and damage to property while in the possession of the common carrier, but the principle is the same, as I think the committee will recognize as I proceed. This is the case of *Tyson & Jones Buggy Company v. Aberdeen and Asheboro Railway Company et al.* The court in the opinion said, through Judge Harlan:

Without entering into the details of this complaint, it will suffice to say that, as presented on the pleadings, it involves a small overcharge upon a shipment of iron wagon axles made by the complainant in November, 1907, from Wilkes-Barre, in the State of Pennsylvania, to Carthage, in the State of North Carolina. The overcharge resulted from the inadvertent collection at destination of the fourth-class instead of the fifth-class rate, as required under the published tariffs of the defendants, for a portion of the haul. The complainant, being advised of the fact that the fifth-class rate was the legal rate, made demand upon the Aberdeen and Ashboro Railway Company, the delivering carrier and principal defendant, for a refund of the overcharge. That company, although it had collected the charges on the shipment, apparently declined to investigate the matter at all, and contented itself with referring the complainant to the several carriers back along the route of the movement to the point of origin. After a rather extensive but fruitless correspondence in relation to the matter, the complainant called it informally to the attention of the commission. No result followed from our efforts to get the serious attention of the principal defendant to the complainant's claim. Finally this formal complaint was filed. Promptly after copies of the complaint had been served upon the defendants, and they had thus been put in a position where they were compelled to look into the matter, it was ascertained that the complainant's contention was well founded, and the amount of the overcharge was at once refunded.

In moving the dismissal of its petition the complainant advises us that it has a number of such claims still pending with various carriers, the settlement of which it has been unable to secure, notwithstanding its earnest efforts in that behalf, and it asks that some action be taken by the commission in order that shippers may secure more prompt adjustment by carriers of overcharge claims. An order will be entered dismissing the complaint upon motion of the complainant, but we think the time has come for some comments by the commission in relation to the practice of carriers in such matters.

Now I invite the special attention of this committee to the comment of the judge in the remainder of this opinion, which is brief:

From shippers in all parts of the country, and from local traffic associations which are making earnest efforts on fair and reasonable lines to secure a reform in the practices of carriers in this regard, many complaints have been received during the past year of the inattention of carriers to plain overcharge claims and of their delay in adjusting them. And a survey of these complaints has led us to the conclusion that this practice, or rather lack of practice, among carriers is open to severe criticism.

A substantial portion of the time and labor of this commission is given to the effort to secure, through informal correspondence, the settlement of claims of this character, and it is a burden from which we ought to be relieved by carriers. On the other hand,

from the shippers' point of view, nothing in connection with transportation is more vexing and irritating than the labor and delay incident to the following up of an overcharge claim and securing its repayment. When an undercharge occurs it is promptly discovered by the accounting departments of carriers when revising the billing, and demand is at once made on the shipper for payment. With equal facility overcharges are also detected by accounting officers. But from the complaints that reach us it seems to be the duty of no one in the interior organization of many carriers to see that the amount is refunded to the shipper. And when an overcharge is detected by a shipper himself he is able in the great majority of cases, if we may form conclusions from the numerous complaints now before us, to secure its repayment only after his patience has been sorely tried by the effort and delay required in order to secure serious attention to his demand.

Without wishing to be understood as expressing the view that this loose practice with respect to overcharge claims is characteristic of all interstate carriers, it is nevertheless so common as to justify some attention by the commission. Apparently, it is not understood as fully as it should be by railroad officials charged with the adjustment of such matters, that the retention by a carrier of an overcharge not only has all the effects of an unjust discrimination against the shipper from whom the excess has been demanded, but leaves the transportation transaction in an unlawful condition, both under the act to regulate commerce and under the Elkins Act, until the overcharge has been adjusted. We are advised that the delay in making repayment is frequently due, not to the failure to discover the overcharge, but to the efforts of the delivering carrier to ascertain before making the refund to the shipper which carrier participating in the movement is responsible. This is not a proper practice. The shipper is entitled to repayment from the carrier that has collected the freight charges as soon as it appears that an overcharge has in fact been made. When the refund has been made, it is then that carrier's duty to see which of the carriers that participated in the movement is responsible and charge it accordingly. When the overcharge has been discovered, it should immediately be repaid by the carrier that collected the charges, and this should be done whether a demand has been presented by the shipper or not.

Our bill provides now for ninety days for adjustment. The opinion goes on:

We well understand that the adjustment of claims is a matter that requires time and that they can not safely be paid until after the facts have been fully investigated. But in our judgment the claims offices of carriers should be so organized as to enable them to dispose of all overcharge claims within thirty days, except those of unusual or special character, and such claims ought to be disposed of within sixty days at the utmost. We refer now to plain overcharge cases. The phrase "overcharge" as used by the commission embraces only cases where carriers have demanded and received a rate in excess of the published rate. We do not use that phrase in referring to cases where the published rate has been collected, but is alleged on one ground or another to be an excessive rate. As to the latter class of claims, many of which are adjusted informally by the commission, it seems to us that the complaints of shippers ought to be investigated and put before us for disposition within ninety days in the great majority of cases.

The amended act to regulate commerce gives the commission no authority to establish any limit of time for the adjustment of claims or any authority to discipline carriers that are not attentive to their plain duty in such matters. The adjustment of claims, however, is a matter which the carriers themselves, in good faith to the shipping public, ought to take hold of so as to reach results within a reasonable time; and we shall expect the cordial cooperation of all carriers in our request that their claims departments be so organized as to give more prompt results, to the end that all occasion for the well-founded complaints that shippers now make may be removed.

I will remark here that this opinion deals simply with overcharges; but, as I stated before, claims for losses or damages to property while in possession of the common carrier are of the same character of cases as these. Now, here is the hint that they will have to appeal to the court:

Carriers owe it to themselves not to put the commission under the necessity of calling this matter to the attention of the Congress and asking for power to compel them to do what, in their own interest and in fairness to shippers, should be done on their own initiative.

That is the opinion of the commission.

The CHAIRMAN. Who delivered that opinion of the commission?

Mr. GORDON. Judge Harlan.

The CHAIRMAN. Mr. Harlan?

Mr. GORDON. Mr. Harlan; yes.

Now, just another word or two. As I stated in reading, our bill goes a little further than the matter of overcharges. It provides for the payment of overcharges and also for claims for the loss or injury to property. That question is not discussed in this opinion; but, as I said before, the principle is the same. If the committee will read the bill I think they will find it a very reasonable one. It simply provides that these common carriers shall pursue an honest course of business, which we expect ordinarily between citizens in relation to each other. That is about all it is.

The CHAIRMAN. General, what do you say to this: Your bill is not confined to carriers doing an interstate business, to begin with. Do you think we would have any authority to endeavor to make it apply to a carrier wholly within the limits of a State?

Mr. GORDON. How is that, sir?

The CHAIRMAN. Your bill does not purport to be confined to carriers doing an interstate commerce business merely?

Mr. GORDON. Yes; it says common carriers engaged in interstate commerce.

The CHAIRMAN. I put my question wrong. It is not confined to the interstate business?

Mr. GORDON. No.

The CHAIRMAN. For instance, if there is a claim arising out of a shipment of freight from Pittsburg to Philadelphia, for example, in the same State—

Mr. GORDON. It does not provide for that. But if the court please, I think it ought to.

The CHAIRMAN. The bill does provide that it should cover everything.

Mr. GORDON. Then I ask that the bill might be amended so that it would provide for that.

Mr. TOWNSEND. Your bill does provide for that. It does not confine that to interstate commerce unless the Constitution does.

Mr. GORDON. As you say, Mr. Townsend, if it does not, it should be so amended that it would.

The CHAIRMAN. What do you say as to the power of Congress with reference to the suits brought in a state court by citizens of a State against railroads in the State for damages to property shipped in interstate commerce?

Mr. GORDON. It seems to me that the courts in the State where the overcharge was made would have authority to adjudicate the case under this act.

The CHAIRMAN. Can we confer authority upon the state courts?

Mr. GORDON. I think perhaps not.

The CHAIRMAN. But you endeavored to do it in this bill. Under the bill you provide that a state court shall exact a penalty of 1 per cent on the amount claimed, and the further penalty of 10 per cent and reasonable attorneys' fees and other costs to be enforced by the state court in a suit brought by a citizen of the State against a railroad in the State. Now, I ask, have we that power?

Mr. WANGER. If suit was brought in a court which had no jurisdiction, judgment could not be recovered therein, and the provision would naturally be ineffective.

Mr. GORDON. It would be almost impossible to get redress if one had to go into a federal court for all this.

The CHAIRMAN. You certainly do not want to make a law which will require people to sue in a federal court?

Mr. GORDON. No, sir. That is what we should try to avoid.

The CHAIRMAN. I am not expressing an opinion on the subject, but I think we have never had a very satisfactory solution of the power of Congress with reference to these subjects.

Mr. GORDON. That is a question.

Mr. ADAMSON. What has the declaration of a right or duty got to do with the jurisdiction of a court, as to the right to sue therein?

Mr. GORDON. If we have a right, under the old maxim we ought to have a remedy somewhere.

The CHAIRMAN. In this bill you provide that certain things shall be included in the judgment in any court in which the suit may be brought?

Mr. GORDON. Yes.

Mr. ADAMSON. It does not say state court, does it?

The CHAIRMAN. No; but it is perfectly plain that it must be a state court. There is no other place where you can sue an individual of a State within the State.

Mr. ADAMSON. It might be a question of authorizing the removal of the jurisdiction; but if you have a right established beyond all question, and that state court has jurisdiction, there is no doubt about its having the right to try the case.

Mr. STAFFORD. But assume the State had passed a similar statute; but which was different from the provisions of the national enactment; the state court could not take jurisdiction of that case.

Mr. ADAMSON. If it was a regular bona fide case affecting interstate commerce, Congress has the right to pass the law, and it would be the law, no matter what court it is considered in.

Mr. SIMS. Has the Supreme Court passed upon the question in a case where Congress has clear jurisdiction, giving the State the power to enforce its legislation?

Mr. BARTLETT. Yes; in the early cases.

The CHAIRMAN. Here is the proposition: If a state court is not obliged to carry out the legislation of Congress, whether the railroad company could not in every case remove the suit to a federal court; and whether he would be willing to permit the railroad company to remove to the federal court every suit brought against a railroad for a claim.

Mr. GORDON. Gentlemen, if you will let me have another hearing, I will consult authorities in the meantime and advise you then.

The CHAIRMAN. Very well. Now, Mr. Parker.

STATEMENT OF HON. RICHARD WAYNE PARKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY.

Mr. PARKER. Mr. Chairman and gentlemen, the bill I urge before the committee is House bill 16343. The remedy proposed by this bill was reported by the Committee on the Judiciary in 1902. The

bill itself, with an extra section which I always regarded as of doubtful constitutionality, providing that this should be in addition to all other remedies against any person, was not only reported in 1906, but was passed by the House, and it failed in the Senate only because at that time Senator McCumber proposed an amendment to the Elkins Act which was embodied in the Hepburn Act and which was supposed to cover what this bill provides, but does not.

I have argued this matter before this committee in the last Congress, but I suppose, from the number of new faces which I see here, I ought briefly to repeat that argument. I should also be very glad if I could have permission from the committee to reprint in this hearing the report of the Committee on the Judiciary made in 1906, in so far as it is applicable to these sections. That report is almost out of print now. I was able to get only two copies.

The CHAIRMAN. Very well. Give it to the stenographer.

(Following is the report referred to:)

[H. Rept. No. 432. Fifty-ninth Congress, first session.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 11784) to authorize the recovery of the value of unlawful rebates and discriminations and penalty therefor, and for other purposes, have examined and considered the same, and do report the said bill favorably, with amendments as follows, and that the same do pass with the said amendments:

In section 2, after the words "in the name of the United States in any" (p. 2, lines 6 and 7), strike out the words "circuit court" and insert the words "court of competent jurisdiction."

In section 4, before the word "remedies" where it first occurs (p. 3, line 13), insert the words "rights or," and in the same section, before the word "remedies" where it occurs at the end of the section, insert the words "rights and."

It is at last coming to be thoroughly understood that the trusts have fattened in rebates, discriminations, and concessions by which they have reaped benefits and advantages in which the rest of the community could not share and which have been of vast monetary value to them. This bill is intended to enable this wrong to be corrected, so that the future beneficiary of any such unlawful and special benefits and advantages shall be forced to yield up all the profit that he shall acquire thereby, and shall be liable to the United States in a civil action therefor.

The first section will enact:

"That any person, company, partnership, association, or corporation that shall, directly or indirectly, receive from any common carrier any benefit or advantage by any unlawful rebate, concession, preference, gratuity, or discrimination in respect of the transportation of any property in interstate or foreign commerce shall be liable to pay to the United States the value of every such benefit or advantage, to be recovered, with costs, in an action at law to be brought in the name of the United States in any court of competent jurisdiction."

If these unlawful and special benefits and advantages shall be received knowingly, that is to say, willfully and intentionally, the beneficiary becomes responsible for double their value, by section 2.

"SEC. 2. That any person, company, partnership, association, or corporation that, directly or indirectly, shall knowingly receive from any common carrier any benefit or advantage by any unlawful rebate, concession, preference, gratuity, or discrimination in respect of the transportation of any property in interstate or foreign commerce shall be liable to pay to the United States double the value of such benefit or advantage, to be recovered, with costs, in an action at law to be brought in the name of the United States in any court of competent jurisdiction; and if in any such action under this section it shall be found that such benefit or advantage was received, but not that it was received knowingly, then the United States shall recover in such action the value of such benefit or advantage, with costs, as if such action had been brought under the first section of this act."

If there be a fair case made, but of such doubt that the Attorney-General is not willing to prosecute, the court on notice to him may allow an informant to conduct such prosecution under careful provisions against any dummy suits.

"SEC. 3. That either of the actions above provided for may be instituted by the Attorney-General or, by leave of the court, by any person as informant after notice

to the Attorney-General to bring such suit. Such informant shall receive half of any amount that shall be recovered in such suit instituted by him, or by settlement or compromise: *Provided, however,* That such informant shall not dismiss or settle any such suit without leave of the court, after notice to the Attorney-General and the United States attorney for the district wherein such suit shall be pending; and in case of such notice of application to dismiss, or on notice to such informant by the Attorney-General, in case such informant unduly delays or fails to prosecute such suit, the Attorney-General may be ordered by the court to assume said suit, and said informant shall lose all interest therein upon proper terms as to costs and expenses already incurred by him, to be settled by the court."

* * * * *

Until recently it has hardly been realized to what an extent certain persons and corporations have fattened on the public by means of unlawful rebates or how utterly inadequate the present fines and punishments are to meet the profits that are being received. These profits apparently run into the millions. Some years ago it was admitted by the president of the Atchison, Topeka and Santa Fe Railroad that departures from the published rates had cost that company between five hundred thousand and a million a year, and its revenues were then about one-fortieth of the revenues of the railroads of the United States; so that if the like proportion existed on other roads the annual profits, on which monopoly was built up, amounted to between twenty and forty millions of dollars.

The Hon. Charles A. Prouty, of the Interstate Commerce Commission, on April 2, 1902, made the statement that recent investigations by the commission indicated that in the year 1901 the railway companies had paid the great packing houses at least \$2,000,000, probably more.

It is needless to specify instances. Perhaps some claims are not founded on fact; but no one doubts that millions each year go into the pockets of big shippers by concessions in which the public has no share.

It is obvious that the punishment by a fine of a few thousand dollars is utterly inadequate to remedy this evil. It is a remedy that is wanted rather than a punishment—a remedy which will make these men pay as much as the rest of the community for the public service of common carriers. Equality is equity, and there is no real remedy until they are forced to pay at least as much for the same service as others.

Discrimination for the same service is unlawful at common law. But there are numerous statutory provisions declaring rebates, concessions, preferences, gratuities, and discriminations to be unlawful, and in every such case this bill would apply.

Personal discriminations in rates charged for like service is made unlawful by section 2 of the interstate commerce act, approved February 4, 1887 (1st Sup. R. S., p. 529):

"Sec. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this act than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Unreasonable preferences as to persons, localities, traffic, or in respect of connecting lines, are likewise unlawful by section 3 of this act:

"Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

So is discrimination as against a short haul, by section 4:

"Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the

transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

Willful violations of these sections by the common carrier or its agents, by false billing, etc., are criminal, by section 10 of the act, as well as solicitation of such discrimination by the shipper or his agents, same section, amended as to penalty by the Elkins Act.

There are therefore abundant and most general provisions demanding equality of all persons as to the use of interstate commerce agencies. But if any trust or other person violate the law and receive an unlawful benefit or advantage there is noway, in which restitution can be enforced, even if it be an advantage of millions.

The common carrier in such case is not paid for its services. But the common carrier is a party to the unlawful rebate, and where both parties are equally at fault there can be no recovery. In *pari delicto melior est conditio possidentis*. Legislation which would change this rule would be against public policy. Railroads would not go back on their own unlawful contracts or bring suit in good faith. Some one else must be the plaintiff, not the carrier.

Nor is the carrier the proper plaintiff. It has not been injured, for in most cases it has secured an enormous business by the unlawful rebate. It is the public who are injured by preventing competition, ruining competitors of the favored shipper, enhancement of the prices of products, and all the evil consequences of monopoly. It is the public that should recover from the purse of the beneficiary the value that was unlawfully given to him and which has been in his hands an unlawful advantage not shared by the public. The public may condemn and take these unlawful gains, just as it condemns and takes a pirate's vessel (Rev. Stat., 4296), or dutiable articles concealed in baggage and not reported (Rev. Stat., 2802), or unmanifested merchandise (Rev. Stat., 2809), or merchandise falsely invoiced (Rev. Stat., 2839), or unloaded without permit (Rev. Stat., 2867), or on perjury (Rev. Stat., 2924).

These and many other cases of forfeiture of the *corpus delicti* are embodied in our statutes, and these forfeitures are in addition to all criminal punishment. The precedents for such legislation are full.

These, too, are much stronger cases. They are strictly forfeiture of private property, while under the first section of the bill nothing is taken which really belonged to the beneficiary, but only the value of an advantage which was unlawful and never ought to have been his.

The bill distinguishes between rebates knowingly received and those which shall be ignorantly taken, and justly so.

It is the duty perhaps of the shipper to look into the published rates, and pay nothing less. In many cases, however, he simply tells the carrier the amount of his business, suggests that a proper rate should be made, and proposes to go to another carrier if good terms be not granted. Even in the flagrant cases of the big trusts, this, in some cases, is all that can be proved. It does not need words to convey a threat that their vast patronage will go elsewhere unless concessions be made. The case is still more complicated when the question is one of the locality, or of competing points, or of the value of allowance for private cars, or private terminals, or amount of shipment, or any of the various conditions of transportation. Any suit that alleges a willful and knowing violation of the law would probably fail, just as prosecutions have mostly failed hitherto.

The business question in which the public are interested is not whether discrimination is willful, but whether it exists and how it can be redressed. A suit under the first section would enable the simple question of the existence of the discrimination to be considered and decided without any need of averring any evil intent, and in such manner that the shipper and carrier, if honest, will bring in their books and help the decision of whether the discrimination is lawful or unlawful, and if unlawful, to what extent. After that decision, if the discrimination be still maintained, there will be full foundation for saying that it was knowingly received, and for a suit under the second section for double the value of the unlawful benefit or advantage.

The suit for double the value of the benefit is applicable not only to such persistence in preferences which have been adjudged to be unlawful, but also to a vast class of

secret bargains and agreements which are plainly intended to evade the law. Among these may be various forms of rebates noted by the Interstate Commerce Commission:

1. Direct repayment of a portion of the rate originally paid on the basis of the published tariff.
2. Indirect payment, by various devices; such, for illustration, as making of presents to shippers or to members of their families.
3. Special contracts at reduced rates.
4. Allowance of fictitious claims, presented by understanding with the railroad company, alleging damage to shipments received in course of transportation.
5. False classification and underbilling. This covers false description of character of freight, false weights, and carrying of traffic for distances longer than those covered by the billing and the rate.
6. Shipping goods at the export rate to the seaboard when intended for domestic use.
7. Cutting rates or making repayments on traffic wholly within one State, and therefore not subject to the interstate commerce act, and intended to apply upon or influence interstate traffic of the same shipper.
8. Excessive divisions of through rates granted by railway lines to short terminal roads or spurs operated by and built mainly or entirely to serve large manufacturing establishments. Such terminal roads may embrace nothing more than the various tracks within the yards of such manufacturing establishments, built to connect the various shops comprising the plant, and a connection with regular lines of railway either just outside of or at a point in close proximity to the plant. A "railroad company" is organized to operate such switch tracks, the stock being entirely owned by the interests in control of the plant. By the payment of an excessive amount to such terminal line as a "division" of the through rate for the service performed in taking the cars to and from the manufacturing establishment a cut in the tariff rate is effected.
9. Leasing of railway elevators to large handlers of grain, and making contracts with them providing for excessive allowances for the elevation and transfer of their grain, resulting in exceptional advantage to the lessee over other grain buyers and dealers.
10. Payment of excessive mileage upon private cars, giving an undue and unfair advantage to the owner of such cars when he is also a shipper, or to those shipping on those cars if he divide profits with them.
11. Division of commissions of agents with the shipper.
12. Giving free transportation to shippers and their families.
13. Free cartage or cartage allowances made for one shipper and not for others.
14. Permitting storage of freight in railroad depots or freight warehouses, and in cars on track, beyond the free time limit open to the general public.
15. Setting aside of space in railroad depots and warehouses for certain shippers for the purpose of enabling them to perform work necessary to put their goods in better marketable condition before or after transportation, thus saving the shipper the expense of renting or maintaining a warehouse in which to perform the same work.
16. "Midnight tariffs," so called, being a secret agreement with a favored shipper that the published rates for a locality will be reduced on a certain day, before which time the shipper can buy all the goods affected, so that the reduction, when published, operates to his sole benefit.

The statement of Mr. A. B. Stickney, president of the Chicago Great Western Railway, before the Senate Committee on Interstate Commerce on May 11, 1905, contains the following reference to "midnight tariffs:"

"The traffic directors have made secret contracts with large shippers at rates below the schedule rates, and having thus secured the tonnage in advance, they 'publish' a schedule containing the contract rates. In the parlance of the profession such schedules are called 'midnight tariffs,' and have all the effects of secret rebates.

"No small dealer can secure the advantages of a 'midnight schedule,' because he does not control a sufficient volume of tonnage to induce the making of such a schedule. The small dealer must pay the regular schedule rates, but it is not so with the large dealer. The large dealer, say, in grain, agrees with the traffic director of a railway that he will buy in competitive territory a million bushels, guaranteed, and if possible before the game is discovered, four or five million bushels, provided that after he has secured the grain the railway company will publish a legal schedule reducing the rate, say, 1 cent per bushel. With the advantage of this secret understanding the large dealer forces the small dealers out of the market by offering a fraction of a cent more than grain is worth, or induces some of the small dealers to contract to deliver the amount he requires."

"Having thus secured the grain, the 'midnight schedule' is published and filed with the Interstate Commerce Commission. The rate goes down 1 cent, and conse-

quently the price of grain advances 1 cent. The result of the transaction is that the small dealers are driven out of the market or that the small dealers who have made contracts are saddled with losses which the large dealer pockets as profits, and the railway company secures a large tonnage of competitive traffic.

"It is a slick way of turning small dealers' losses into large dealers' profits, but as the law now stands the lawyers agree that it is lawful.

"These legal 'midnight schedules,' which are of frequent occurrence and result in greater injustices than secret rebates, illustrate a defect of the law which will exist as long as the law permits railway companies to make the schedule of rates."

In most of the cases the intent is plain. In many of them the big shipper extorts the illegal concession from the railroad by the threat of diverting his business. As was stated by the President in his last annual message:

"It must not be forgotten that the big shippers are at least as much to blame as any railroad in the matter of rebates. The law should make it clear, so that nobody can fail to understand, that any kind of commission paid on freight shipments, whether in this form or in the form of fictitious damages, or of a concession, a free pass, reduced passenger rate, or payment of brokerage, is illegal. It is worth while considering whether it would not be wise to confer on the Government the right of civil action against the beneficiary of a rebate for at least twice the value of the rebate. This would help stop what is really blackmail."

Where the unlawful concession is secret and plainly intentional, the forfeiture of double its value is plainly none too much. If the unlawful discrimination be proved in such a suit, but not knowledge, only the single value is recovered, as in section 1. But the first section is retained as applicable to the decision of whether or not an open published rate is or is not lawful as between competing persons and communities honestly desirous of such a decision.

Actions by an informant are allowed by the third section, but under strict conditions. In ordinary cases of forfeiture, an action by an informer is to be discouraged. But there may be many cases, both of open and secret discrimination between persons and places, where the competitor may be willing to assume the trial of the issue and to relieve the Attorney-General therefrom.

No action at present lies with any such discrimination unless it be willful or criminal. Section 10 of the interstate commerce act adds a civil remedy to the criminal provision. The suit will not lie except for the indictable act. Section 77 of the Wilson tariff (Public No. 277, August 27, 1894), allows treble damages for injuries by criminal combinations in restraint of trade or of competition. But the great private remedy by civil suit in the courts is little recognized in these statutes. Nor would the damage to a small competitor be any offset to the vast profits reaped by great shippers by unlawful rebates.

This bill opens the courts to the citizen to redress these injuries by his own action in the courts. It may make foul play unprofitable and unpopular in the great game of business.

It will strip the wrongdoer of his unlawful gains, and of double those gains if the offense be clearly willful.

It enforces equality for all.

* * * * *

This bill is one to prevent trusts, by confiscating or penalizing their unlawful gains. In this matter of trusts the paramount question is the redress of rebates, special privileges, and advantages in interstate freight contracts. It is by the aid of such unlawful privileges and advantages that the great monopolies of the land are believed to have been built up and maintained. The interstate commerce law forbids all such advantages, but its penal provisions have utterly failed to prevent them.

They perhaps usually consist, not in rebates of money, but in special privileges, as to which it is difficult or impossible to prove criminal intent, so that prosecutions of the carrier under that act have generally failed, and prosecutions of the shipper will probably be just as futile.

A remedy is wanted that will put in issue, not the question of the intent with which a special privilege is given, but the question of fact whether it has actually been given. For this purpose the first section, providing simple action at law to recover the value of the rebate, special privilege, or advantage, will have a much better result.

In such an action the defendant can not plead the purity of his intent or refuse to testify for fear of criminating himself, or do anything except to ask a fair trial of the question whether his contract, privileges, or freight rates are valid under the law of the land. If he has received unlawful advantages, recovery will be had, not of a mere fine, but of the full value of these advantages.

If the rebate be received knowingly—that is, willfully, persistently, or by secret contrivance, showing an intent to defraud the law—double the value will be recovered.

Under control of the court, the redress to the public may be assumed by the citizen if the Attorney-General can not conveniently do so.

But the criminal law is not affected.

We believe that the provisions of this bill meet the crying need. They go directly to the injury—the unlawful benefit of the few by the plunder of the many—and ask that this benefit be restored, or twice its value if willful.

Mr. PARKER. Now, briefly, the difficulty with all the present provisions to prevent unlawful rebates and discriminations is that they are exclusively penal or involve suits for a penalty of treble damages for the knowing reception of such rebates or discriminations. This is in the Elkins Act as amended in section 1, page 36, in the middle of the reprinted act to regulate commerce, where it is provided that—

The Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid, and in the trial of said actions all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

It is obvious that trial in the courts of the righteousness of any particular arrangement is almost impossible at the present time. My proposition, therefore, was that if any person engaged in interstate commerce had received an unlawful discrimination, we will say, for example, in switches, cars, rebates, apportionment of mileage, or any of the many forms which it can take, involving sometimes money and sometimes otherwise, then that person has no right to retain that money. It would not do to say that the railroad should recover the value of this discrimination, because the railroad willingly or unwillingly, though sometimes by force and threat of loss of traffic, has been a party to that discrimination, and therefore has no right to recover. The persons injured are the public, and the proposition was that the United States, representing the public, may at any time recover its value from any shipper who shall have received the benefit of any unlawful discrimination or rebate. The words are, "Any unlawful rebate, concession, preference, gratuity, or discrimination in respect of the transportation of any property in interstate or foreign commerce," and the person who receives that unlawful benefit should "be liable to pay the United States the value of every such benefit or advantage, to be recovered, with costs, in an action at law brought in the name of the United States in any court of competent jurisdiction."

Mr. ADAMSON. Would furnishing better side tracks and switching opportunities to one mill than to a neighboring mill come within that category?

Mr. PARKER. Perhaps it would. I hope it would. That is not covered now. The people must know what a difficulty now besets the shippers and carriers in obtaining any proper decision in any particular case. I might cite the tap-line cases, which are familiar to you. In December last it was decided by the Interstate Commerce Commission, as a general principle, that if a railroad, even if it do a public business such as the carrying of mails and even if it be 50 or 100 miles long, still, if it is owned by a mining or lumber company and do company business principally, then it is not entitled to prorate the

cost of joint traffic. I am not objecting at all to that decision, but when made, how is any particular case to be determined, as to whether it comes within that rule or not? The commission refuse to determine any particular case in advance and said that——

Mr. KENNEDY. I am not familiar with that decision, Judge. What do you mean by the prorating of the cost of traffic?

Mr. PARKER. That they can not make a through rate over their road in connection with other roads and take their share of the mileage.

Mr. ADAMSON. They are regarded as loading on the other carrier when they use the other carrier, just as you would dray to the other railroads?

Mr. PARKER. Yes.

Mr. KENNEDY. That is where the company owning the timber, or whatever it was that is transported, built a private road?

Mr. PARKER. Yes, or owns the stock of the road partly or fully. There are infinite varieties of facts. They may own all or part of the stock; they may do an almost exclusive business for their own mills or mines, or they may do two-thirds of the business for the public in carrying the mails, and so forth. Each particular case varies from the other, and the decision itself is to a certain extent questionable. It can not be brought up.

Mr. KENNEDY. That is, the commission held that they could not make a contract with the connecting lines fixing their share of the joint rate?

Mr. PARKER. The commission has held as a general proposition that where the railroad was owned entirely for the benefit of the mine, they could not; but they have not determined any particular case, and they say this must be settled by law in the courts. That is right; but when they come to settle it by law the difficulty is this, that if a wrong rate be allowed, the remedy is by criminal prosecution, with fine and imprisonment, against the parties.

Mr. ADAMSON. It is properly regarded as a shipper and not as a carrier?

Mr. PARKER. Yes; and they dare not prorate, and run the risk of indictment. They have to pay these extra rates, and there is no way of getting trial except by going again to the Interstate Commerce Commission and waiting, say, two years on appeal.

Now, this bill would give a mode of trial. If there be doubt, honest doubt, about the fairness of this arrangement of prorating traffic, the United States, under this section that I have just read, could bring a suit for the value of the alleged unlawful benefit or advantage received by these parties, who are many, all over the United States. It could bring it immediately. It would be determined by the court. The parties, knowing that no willful or criminal intent was alleged against them, would bring all the papers in court. Judgment would be had. After judgment, if they continued to do what had been thereby determined to be unlawful, then the second section would come in effect, by which a knowing acceptance of any unlawful discrimination incurs a forfeiture of double the amount to the United States.

The CHAIRMAN. I wish you would explain there the propositions in the first and second sections. They seem to be identically alike, except that one provides that you can recover double the amount and the other the amount only.

Mr. PARKER. The first omits the word "knowingly." The word "knowingly," in line 14 of section 2, is not in the first section. It is beyond all question that if a man even unknowingly receives the benefit of an unlawful discrimination he ought to return it. That is all that the first section says. If he knowingly receives that discrimination, he ought to pay a penalty, and that is why the second section asks for double the amount.

Now, this was one example. Another example that appealed to me most strongly is the case of two manufacturers, we will say, on the same railroad, where one gets a switch and the other is refused a switch; or, we will say, they get different published rates, it being honestly alleged, we will say, by one party and the railroad that there ought to be a discrimination in rates because of the ease in transportation, say, or the facilities, or the amount of business done, or whatever it may be. The other man, however, thinks he is injured. There is no remedy now except by an appeal to the Interstate Commerce Commission to change those rates.

This act would enable him to go to the United States attorney and apply to the court under the third section, alleging an unlawful discrimination between persons, and that one man is getting a benefit that he is not entitled to under the law, and that the Attorney-General should bring suit. Thereupon, under the third section, if the Attorney-General thought there was a real remedy, he could bring the suit. Otherwise the courts could, in a proper case, allow the party himself, as an informer, to bring suit, with the right to half the value when recovered, if any. When once brought, the suit can not be allowed to be used as a blackmailing agency or discontinued without leave, and the district attorney can at any time take up that suit and prosecute it. The bill gives the machinery for allowing the determination in courts of law, as between man and man, and man and railroads, of such fair questions as ought to be tried. It is a provision that allows this to be tried in a court of law, whether there be a mere mistake as to rates, or a knowingly committed act in the nature of an offense. We remit these questions as to unlawful discriminations to a court of law.

Now, as I have already said in the Senate, a provision of this sort, embodying the second section of my bill only, and not all of that, was incorporated in the Elkins Act by the Hepburn Act of 1906. The provision is as follows:

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly, by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall in addition to any penalty provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said

action all such rebates and other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

This section is defective in this regard: First, it tries only knowing acts, and does not try real rights. It does not give any remedy whatever in the two cases I have spoken of, unless you can prove an act knowingly done with an intent to commit a crime. The action for penalty needs the same proof, with the same difficulty, that people will not incriminate themselves, that evidence is withheld, and that juries are prejudiced against conviction. What we need is a fair trial.

Mr. ADAMSON. You want to ascertain the effects and facts rather than the intention?

Mr. PARKER. Yes; the effects and facts rather than the intention; and to provide a sufficient remedy, where there was no bad intention, by simple recovery of the value when received.

Now, the second difficulty is just as great. It refers to "regular charges fixed by the schedules of rates" and to differences from the regular rates only. Most of the preferences in railroad management have very little to do with the published rates. They consist of greater facilities in the furnishing of cars, and so forth. There are eleven kinds of them enumerated in my report. There are often hidden differences, given sometimes to one man above another by the favor of an underling, sometimes without any bad intention. Sometimes it is thought right to favor a constant patron of the road as against one who has not been a regular patron. There are an infinite variety of differing rates which, though illegal, were established honestly, so that crime ought not to be imputed, because no jury will ever find evil intent.

We are to-day tying up the United States courts with criminal prosecutions, and smirching the reputations of men all over the United States with criminal prosecutions. A recent chancellor of New Jersey said to me a year or two ago that "the legislative crime of the present age is the multiplication of crimes." We are destroying the independent right of each citizen to a civil remedy in the courts. We are injuring the disposition of the people all over the country to protect themselves by civil remedy in the courts. We are creating a state of affairs in which we look for protection to some paternal government or commission instead of going to the courts of common law.

I believe that whether this measure be used as a substitute for the present McCumber section in the Elkins Act, or whether it be a separate bill, the possibilities of obtaining justice for the shipper, for the consumer, and for the railroads will be many times multiplied. First, because it enables the right to be tried without reference to the intention; second, because it places the suit immediately where it should be, before the country, before a court and jury, instead of in a commission; third, because it applies to all forms of discrimination and preferences, and not merely to published rates; and, fourth, because the management of the railroad business and rates of this country by a single commission and by appeals from its decisions is getting to be such an enormous job—I do not mean that word—but such an enormous matter that no one court or commission can ever thoroughly

attend to it. Those were the reasons why I urged this measure. It is a vital matter to afford civil remedies everywhere to everybody under the interstate-commerce act to try the real right instead of relying upon the ability of a government to prosecute and condemn men for crime. I believe, Mr. Chairman and gentlemen, that is all I have to say on the subject, unless you have some questions to ask.

The CHAIRMAN. Mr. Parker, would this be in the nature of a penalty?

Mr. PARKER. I had that question in consideration with Senator Spooner. He thought that it was, and that the word "penalty" should be used. I thought not as to the first section. I think that it is a recovery by the railroads for the benefit of the United States. It might possibly be put in that shape, that an action should be brought in the name of the carrier to recover what was unlawfully received for the benefit of the United States, and the fact that they had assented to it should not be a defense. My judgment is that this is not in the nature of a penalty. It is money that is gotten into a man's pocket that does not belong to him, and all the bill does is to say it should belong to the United States.

Mr. KENNEDY. Where the recovery is double it is in the nature of a penalty?

Mr. PARKER. Yes; where it is double it is in the nature of a penalty. Yes; I think the rules of evidence and the rules governing the whole case would be entirely different for recovery under the second section from what they would be as to the first.

The CHAIRMAN. There is no doubt about the second section being in the nature of a penalty?

Mr. PARKER. No; but I think the first is not.

The CHAIRMAN. The first section, I suppose, is to enable the Government to get some money that is not due to the Government, save in the nature of a penalty. But the question is whether the Government could sue under your first section and recover the amount of the rebate, and then commence criminal prosecution under the Elkins Act and recover a fine and impose penalty or imprisonment.

Mr. PARKER. I do not think they ought.

The CHAIRMAN. I am not talking about whether they ought. Do you think they would have the power to?

Mr. PARKER. I struck out the fourth section inserted in a former bill in the Committee on the Judiciary—the fourth section of the original bill—because I did not think it constitutional. You put that question to me when I produced the bill at the last session of Congress, when it contained that section, and I said very frankly that in my opinion the Government had no such power, but in the opinion of a majority of the committee, to which I bowed, it was thought they had the power. I can not answer your question. But whether recovery of the simple value be a technical penalty or not, I am assured that the party against whom the suit was brought would be anxious to prove his honesty by producing all the evidence and saying, "I want to try this question as a really fair question between man and man."

The CHAIRMAN. That is what I am trying to get at. Maybe he might be too anxious. Supposing a man might be receiving rebates which subject him to a penalty of imprisonment, and the Government is considering proceedings against him for that purpose, or may be

considering; they may not know about it yet; can he not get somebody to act as informer and have a civil suit brought against him which will render him immune from criminal prosecution?

Mr. PARKER. Not without leave of the court.

The CHAIRMAN. The court might not know.

Mr. PARKER. The court would consult the Attorney-General about it.

The CHAIRMAN. The Attorney-General might not know.

Mr. PARKER. In certain cases a wrong might be done, but in most cases the trouble is just the other way. As the situation is now, the shippers and carriers do not know what to do, and they want to have the right in each particular case determined, and they have no way now of having it determined by a prompt action.

The CHAIRMAN. There is no question about rebate?

Mr. PARKER. Oh, no; those are criminal.

The CHAIRMAN. Now, take the question of preference or discrimination. As the law now stands, the Interstate Commerce Commission is authorized to determine whether there is a discrimination or a preference given to one shipper over another. Do you think it would be desirable to have that matter submitted to a court here, and the same question probably submitted to a court in some other place, and that the court should determine what should be a preference or a discrimination instead of the commission determining that matter? Would it not lead to confusion, to say the least?

Mr. PARKER. I have thought of that difficulty. I can only say that appeals on these matters can be carried, if desired, up to the last court, and it is proposed to have a court of commerce to determine such appeals. But, outside of that, it is far better to be able to get a decision in the right way instead of having only criminal prosecutions. The case that is now plaguing every shipper and railroad company in the whole Union is that when the Interstate Commerce Commission has laid down a general rule of that sort there is no way of getting a particular case into court. That is really no way, because the only thing that can be done is for the railroad company to cease doing that particular thing, although both sides think it perfectly lawful, because they are afraid of a criminal prosecution, to which they ought not to be subjected.

The CHAIRMAN. As to switches, the International Harvester Company, of Chicago, the Illinois Steel Company, and a few companies like those were the ones concerning which the commission made the first investigation, and it was there ruled that these companies received a greater proportion of the through freight rates than they were entitled to. Do you think it more desirable to submit that matter to the federal judge in Chicago or the Interstate Commerce Commission to determine, the commission being guided—or should be guided—by principles that should stand throughout the country?

Mr. PARKER. If the chairman please, this does not oust the commission. The commission would make their determination, but this gives a new remedy. Instead of being forced, after the commission has made such a determination, to go into a criminal suit where the prosecution would be likely to fail, because the people would say there was no criminal intent, the United States would be able to recover all the back benefit received from the illegal discrimination.

The CHAIRMAN. Suppose the commission had acted, or had not acted, either one, and suit is brought in a federal court under your

provision, and the court makes the determination that there is a discrimination or preference, would that have any future effect?

Mr. PARKER. Yes.

The CHAIRMAN. Then that would override the action of the commission, if it had acted, or would make their determination if the commission had not acted?

Mr. PARKER. If the court went against the commission, very true; but then an appeal would always be possible, just as an appeal is possible from the action of the commission, and those appeals would come finally into the same court.

The CHAIRMAN. We are now claiming that the commission, when it acts upon those matters, acts as the legislative body, and that the court can not correct that action unless on constitutional or jurisdictional grounds. But your proposition, as I understand, would throw the whole matter open to the court to determine on a hearing as to whether there was a preference or discrimination, and let the court determine this matter instead of the Interstate Commerce Commission.

Mr. PARKER. Is there no appeal from the determination of the facts by the commission? I do not so understand it.

The CHAIRMAN. The commission contends——

Mr. PARKER. You said we are contending; I did not know that that was your contention.

The CHAIRMAN. I think that is the practical contention of the Committees on commerce, although what they contend does not make any difference. But the court has determined——

Mr. PARKER. It seems to me it is a most dangerous thing to allow any commission to determine for the whole United States what is equality and what is not, as a matter of fact. They can fix rates; they can settle those things as to what are reasonable, and so on; but when it comes to an absolute question as to what is equality between two men in the same community I do not think that that ought to be determined by any commission finally, and I think it is too important a matter to be left with it.

The CHAIRMAN. Is not every disadvantage and advantage also more or less in the nature of rate making?

Mr. PARKER. Then perhaps I went too far in my admissions about rates.

Mr. KENNEDY. It is a legitimate function to prescribe practices as well as rates upon the part of a common carrier, to regulate what it may or may not do?

Mr. PARKER. Yes. I will take up this question about a tap line. Some lines are 100 miles long, and some are mere switches or side tracks. Some do an almost exclusive business for a single man, and some do a pretty general business. The commission have placed it upon the question, I believe, of the ownership of the stock in the decision that I have spoken of, without much reference to the entire amount of business that is done.

Mr. KENNEDY. Those tap lines originate the freight?

Mr. PARKER. Yes.

Mr. KENNEDY. And in their operation the discrimination generally is against some link in the connecting line with which they do business?

Mr. PARKER. I am talking of no particular cases. I am talking about a great variety of cases, in which each has to be determined

separately, and the courts have not made any rule, and the people are afraid to test it, because they do not want to run into the danger of a criminal prosecution. I think it is fair that they should have the opportunity of testing the validity of each particular practice in a civil action.

Mr. RICHARDSON. You said you did not think the commission ought to be clothed with such arbitrary power to pass upon the question for the whole country. In other words, there ought to be an appeal. I agree with you about that. Have you examined—I hope you have, carefully—this provision that is commonly called “the administration bill,” introduced by Mr. Townsend? Have you examined the clause in there for the court of commerce?

Mr. PARKER. Yes.

Mr. RICHARDSON. Do you think that meets any of the evils or troubles you are speaking about?

Mr. PARKER. That matter is before the Judiciary Committee at present, as well as before your committee, and I would rather not speak of it now. We are giving the matter our most careful consideration.

Mr. RICHARDSON. I do not see why you would object to giving this committee the benefit of your opinion.

Mr. PARKER. I think it is a delicate matter.

Mr. RICHARDSON. You occupy a very high and dignified position.

Mr. PARKER. I think it is a little delicate now, when I expect later on to give my opinion from the Judiciary Committee as a formal utterance.

Mr. RICHARDSON. We are asking for information and for light.

The CHAIRMAN. You might give us your opinion, and then we would get the opinion of the judges over there, and so on.

Mr. PARKER. I would rather not put myself down in writing at the present time in a matter so important as that further than to say that whatever court is ever established, whether it hold jurisdiction over special matters only or over all sorts of cases, it ought to be certainly a court and not a bureau, and I am therefore very much gratified with the wise provisions of that draft which provide for the detail of the judges from the general courts of the United States and for their return to those courts at the end of their detail.

Mr. RICHARDSON. If you will allow me to make a deduction from that statement of yours, you mean by that, as I infer, that the Interstate Commerce Commission ought not to be clothed with the power of a prosecutor and judge and lawmaker?

Mr. PARKER. No; I did not say that.

Mr. RICHARDSON. That is the position they have assumed?

Mr. PARKER. No. A commission is an executive function of the Government, and every executive function of the Government and every executive bureau exercises all three of those powers, more or less, subject to an appeal of the courts. You can not look at the decisions of the appraisers, for instance, without feeling that they are acting both as judge, prosecutor, and as you said, court and party, as well as lawmaker, at the same time. They have to be all these in an executive inquiry. It is an executive, provisional act which in a Government so complicated as ours must have place. But the distinction in my mind, so beautifully brought out in the argument on the Hepburn bill in the Senate, is that that action is purely executive,

and that there is always, as to all substantial rights, a necessary appeal to the courts thereafter.

Mr. RICHARDSON. I see that in your bill, Colonel, you ask or claim authority to institute suits to recover for rebates and discriminations. Is it not a fact, from your broad observation of matters of this kind, that under the operation of the Hepburn rate bill, rebates and discriminations of common carriers have greatly depreciated or diminished under the operation of that law?

Mr. PARKER. That bill has had a most beneficent effect.

Mr. RICHARDSON. That is what I wanted to hear from you.

Mr. PARKER. It has not, in my judgment, gone far enough in certain directions. I do not know enough about it to dare say as much as I would otherwise, but for a hypothetical case I should say that if a man were a large wholesale butcher he would have a right under that bill to put cold-storage cars on any railroad and carry them anywhere in the United States on equal terms and rights with any other butcher, but when he gets to his terminal he would be absolutely powerless to enforce or claim any right to a cold-storage warehouse.

That is just one example of the difficulties besetting any law and its administration. I said, as to this bill of mine, that I hoped in cases of clean and clear discrimination in favor of one shipper or receiver as against another in refusing switch facilities for storage house or other purposes, I hoped that this bill would give him an opportunity to appeal in his own district where the facts were known, and to bring down monopolies.

Mr. TOWNSEND. I do not quite understand the remedy to the man in that case. I can see where in your bill a suit might be brought by the United States against a man who had received some benefit and the value recovered to the United States. But what would be the measure of damages in that case? This man had not the switch to the cold-storage car or warehouse. Another man comes in and he has got such accommodations. The United States is going to sue the man who received accommodations, as I understand?

Mr. PARKER. Yes; but for the benefit received by the other man, not for the damages received by the other shipper. If there is a man who offers the same kind of business and is ready to take a switch that would give just as little trouble to the railroad in just as good a place, then if they refuse to him what is given to another, that constitutes a preference which ought to be made unlawful.

Now, the United States in such a case should have the right to sue the man who has the switch for the value or the benefit that he has received, rather than other people. Likewise the person who can not get the like privileges, or any other person, if you please, should be given the right to come to the courts of the United States and ask leave to sue. They might have to make a strong case to get that leave.

Mr. RICHARDSON. That is a discrimination, as you pronounce it?

Mr. PARKER. Yes.

Mr. RICHARDSON. Don't you think, under the broad provisions of the Hepburn law as we have it to-day, that that discrimination is reached now with a penalty?

Mr. PARKER. It is very hard to get criminal convictions, and it is hard to prove the mere right of the thing. The State must prove that the discrimination was knowing and willful. We need a way to

do justice without the necessity of proving that the act was knowing and willful.

Mr. RICHARDSON. Make a man subject to liability for civil damages?

Mr. PARKER. Yes; liable in a civil action for money that is in his pocket and ought not to be there.

Mr. RICHARDSON. If that is so, he ought to be in the penitentiary.

Mr. PARKER. Oh, no. It frequently happens that a man gets a benefit without intending to do anything wrong, and under ordinary circumstances he ought to give up that benefit and ought not to be subjected to a penalty or the penitentiary. What is more, all judges and juries feel that way, and they will not convict. The great bulk of the administration of the law now consists of tremendous fines and imprisonment given by a jury and set aside above.

The CHAIRMAN. Let me see if I understand your attitude on the switch proposition. As I understand, two men are in the same business, and one has a switch and the other has not. The railroad company refuses to put in a switch for the one that does not have a switch. You claim that the one who has the switch has a preference over the other?

Mr. PARKER. He may have.

The CHAIRMAN. You assume that it is a preference?

Mr. PARKER. Yes.

The CHAIRMAN. And the one that has not the switch causes the Government to institute a suit against the one who has a switch and compel him to pay the Government the amount of value represented by the preference? Is that it?

Mr. PARKER. Yes; and after an opinion has been had, and he continues to do that, then the penalty is doubled.

The CHAIRMAN. He has nothing to do with giving the switch. Here is the proposition I want to put before your consideration: Here is the man with the switch. He has been sued once. Whatever he does after that he does knowingly. Now, can the Government continue to bring a suit against him and make him pay twice the amount of the preference because the railroad company will not put in a switch for somebody else over which the first man has no control whatever?

Mr. PARKER. If you will make the other fellow pay a little bit more for the use of the switch, you can even that thing up somewhere or other without having to put in the other one.

The CHAIRMAN. Is that your proposition, that the man who has the switch will lose twice the value of the preference because the railroad company will not deal rightly with somebody else?

Mr. PARKER. It would be so unless the other fellow is at the bottom of the refusal and would withdraw his opposition. That is generally the case, according to my information.

Mr. TOWNSEND. You used the illustration of the refrigerator car and the other car?

Mr. PARKER. Yes.

Mr. TOWNSEND. Now, the man that was not shipping refrigerated beef would not stand in the way of the railroad granting the other man a switch or accommodations if he wanted them, and yet you would sue that man who had been enjoying the right perhaps for years, and a right which every other man in the United States has

the same right to enjoy, because, forsooth, the railroad did not grant to the man who starts in the business of shipping refrigerated beef every privilege he thought he ought to have. So, ought the railroad to be sued rather than the man who is enjoying a proper legal right?

Mr. PARKER. Don't you remember, Mr. Townsend, that I only said, with reference to switches, that I hoped the bill would go so far as switches in an exceedingly clean and clear case? When I referred to that, I meant if the party who was receiving the benefit was privy to the discrimination. Recovery is improbable except in such a case. There is a great deal of doubt whether this bill or any other bill will extend to switch privileges because that matter is so complicated by the ability of the railroad to put a switch at a certain place practically; their right to determine whether their main track shall be unbroken by switches, and all those questions. There are very few cases in which that particular kind of discrimination can be brought up. But this bill will apply to all cases where switches and facilities are granted, and the question is in the particular case whether a discrimination is really made or not. I think the courts would in each case refuse to try it until an opinion had been got from the Interstate Commerce Commission for their advice. I would be inclined to do that if I were a judge. They would want the advice of the executive branch of the Government, which has all the facts before them.

Mr. TOWNSEND. Do you think it would not be dangerous for the shipper, for instance, to go to the railroad company and ask for a switch to be put in his factory—dangerous perhaps for the reason that some other fellow had asked for the same privilege and had been refused?

Mr. PARKER. No; I do not think it would be dangerous except in the clearest and most outrageous cases. I did not mean to lay particular stress on the example I gave of cold storage, because I do not know enough about it. I have only surmised that it was easier for one man to do business in that way than another from what I have heard. I do not want what I have said to imply that any such thing is actually done.

Mr. TOWNSEND. You meant it to apply to cases of discrimination such as you could cure—existing discrimination?

Mr. PARKER. No. I have cited in the fifth page of the report that I have made the various forms of rebates noted by the Interstate Commerce Commission, under which I have noted excessive divisions of through rates to short terminals or spurs, leasing of railway elevators to large handlers of grain, and contracts for excessive leases, payment of excessive mileage upon private cars, and so on, and so on.

Mr. TOWNSEND. What report is that?

Mr. PARKER. This is my report that I asked the stenographer to embody in his notes.

Mr. TOWNSEND. When you referred to the report of the commission I wanted to know what report of the commission you referred to.

Mr. MILLER. It is a report of the Interstate Commerce Commission, but the question is, which report?

Mr. PARKER. I do not remember exactly what date it was, but it was shortly before January, 1906.

Mr. TOWNSEND. Prior to the passage of the Hepburn bill?

Mr. PARKER. Yes. I think most of these abuses have gone with the passage of the Hepburn bill.

The CHAIRMAN. Most of these abuses had gone prior to the passage of the Elkins bill in 1903, so far as the Interstate Commerce Commission has reported.

Mr. SIMS. Are the switches usually put in at the expense of the railroad, or the shipper for whose benefit they are to be used?

Mr. PARKER. I do not know. Sometimes I think by one, and sometimes by the other.

Mr. SIMS. When the switch is put in for the benefit of the shipper, do you hold it to be a discrimination when the railroad does not put in a switch for somebody else?

Mr. PARKER. No, sir. The switch is always an interference with the main track. There may be, as I hope, some time on our railroads an extra line of track along the main track in places where an excessive amount of switching is expected, so that the shifting of cars and the mobilization of trains can be arranged for there; but, so long as fast trains have to be run on a double track or single track, a switch is a dangerous thing to be connected with it.

Mr. RUSSELL. In cases where they have a concession or a discrimination, have you any way of finding out the value of the damages? Suppose you take a concrete case and illustrate how the amount of the recovery could be ascertained.

Mr. PARKER. No; I have no case in mind, but I know it is a very common thing in the law generally to ascertain what the benefits are that are received by a man from a certain course of acts. You have to make that discrimination in all patent suits. You compare, for instance, the old machine with the new, and its economy of management, and you find out how much he saved.

The CHAIRMAN. We are very much obliged to you, Mr. Parker.

Mr. PARKER. I am obliged to you, sir.

The CHAIRMAN. Senator Faulkner, are you prepared to proceed?

Mr. FAULKNER. Mr. Chairman, we have nothing to say with reference to Mr. Parker's bill at all. We have nothing to say in regard to it.

In reference to Mr. Gordon's bill, I would like to explain that we were not expecting that, because I was informed that you would have nothing before you except Mr. Parker's bill until half past 9. Now, I have a good deal of information I would like to lay before the committee in reference to Mr. Gordon's bill, and some matters outside these legal questions of the action of the commission itself which would prevent the settlement of a number of these claims by any possibility within ninety days. I had not time, Mr. Chairman, even to go to my package to get those matters and bring them together, and inasmuch as Mr. Gordon has suggested to the committee that he would like to have a little further hearing, if the committee will let us come in on Saturday on this matter, I will try to intelligently present the objections we have to that bill. They are not very serious, perhaps, and it may be that by amendment the bill may be made practicable.

The CHAIRMAN. Senator, how much time will the railroad people occupy on the general propositions now pending before the committee?

Mr. FAULKNER. As a general proposition, on those days that you have already set, Mr. Chairman, we will be ready to take up those subjects on those days.

The CHAIRMAN. They would commence to-morrow. Can you commence this afternoon?

Mr. FAULKNER. No, sir; we will not be ready to take up any of them this afternoon, because none were set for to-day except the Parker bill.

The CHAIRMAN. Inasmuch as you would proceed to-morrow morning anyway, I thought perhaps you would be ready to proceed this afternoon.

Mr. FAULKNER. No, sir. When we come to the consideration of those great measures introduced by Mr. ——— and Mr. Mann we feel that other people should be here and represent the roads in addition to those who are representing the roads at this time.

The CHAIRMAN. Will they be here to-morrow?

Mr. FAULKNER. I am not informed as to that, Mr. Chairman.

The CHAIRMAN. I understood the other day that they would be here to-morrow on the bill.

Mr. FAULKNER. They have had notification of the fact that the hearing is set for to-morrow.

The CHAIRMAN. Have you any idea of how much time these people will occupy?

Mr. FAULKNER. If they come, I do not think it likely that there will be over three or four of them at most.

Mr. TOWNSEND. Do you expect to finish up in three days with these bills—on Thursday, Friday, and Saturday?

Mr. FAULKNER. I think so.

Mr. TOWNSEND. Then there are other matters that you want to be heard on?

Mr. FAULKNER. There are matters set for Friday and also for Monday and Tuesday. That is as far as I understand any definite time has been set for any special matters.

The CHAIRMAN. Of course, this is the situation: Anything that we might include in one bill we would like to have you heard on, and heard quickly.

Mr. FAULKNER. You will see, Mr. Chairman, that the majority of all these bills are traffic and operating bills, and it is hard to get all these leading traffic officers here and keep them here all the time.

The CHAIRMAN. You have had no occasion thus far to do that.

Mr. FAULKNER. It is hard for us, without some specific indication to the effect that the committee desires to hear them, to bring up traffic officers of that grade who are intelligent enough to address this committee and give them information if these bills are not going to be considered immediately. But when a bill is set to be heard, we assume that somebody is desired by the committee to speak on it.

Mr. KENNEDY. I should think it would be in order for you to arrange your hearings and bring in your people as you prefer.

Mr. FAULKNER. A great many bills have been introduced here, and we are not inclined to oppose them when they are not pressed. Many of them are introduced by gentlemen because some one has sent them to them and they have desired the bills to be introduced, and they will not be pressed for consideration. It is a great labor on us to take up a large number of bills that are not going to be considered by the committee and have hearings upon them day after day.

The CHAIRMAN. Very well. We can resume the hearing to-morrow morning.

Mr. FAULKNER. When will you hear us in regard to Mr. Gordon's bill? We can appear at any time that is convenient to Mr. Gordon and to the committee.

The CHAIRMAN. We will hear you on the Gordon bill on any of the days this week.

Mr. FAULKNER. Then we will take Saturday for that.

The CHAIRMAN. If you get through the other bills before that.

Without objection, the committee will now stand adjourned until to-morrow morning in this room at 10 o'clock.

(Thereupon, at 11.40 o'clock a. m., the committee adjourned, to meet to-morrow morning at 11 o'clock in the committee room at the Capitol.)

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HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE .

PART XIV

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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FREDERICK C. STEVENS, MINNESOTA.
JOHN J. ESCH, WISCONSIN.
CHARLES E. TOWNSEND, MICHIGAN.
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JOSEPH R. KNOWLAND, CALIFORNIA.
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WILLIAM H. STAFFORD, WISCONSIN.

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WILLIAM RICHARDSON, ALABAMA.
CHARLES L. BARTLETT, GEORGIA.
GORDON RUSSELL, TEXAS.
THETUS W. SIMS, TENNESSEE.
ANDREW J. PETERS, MASSACHUSETTS.

BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Wednesday, February 9, 1910.

The committee met this day at 10 o'clock a. m., Hon. Irving P. Wanger in the chair.

Mr. WANGER. The committee will be in order. Are you ready to proceed, gentlemen?

Mr. THOMAS P. LITTLEPAGE. Mr. Chairman, I believe Mr. Pierce, the general solicitor of the Rock Island, is to make an argument, but I presume he must have gone to the other room in the other building. He was to be here. I have sent a gentleman over there to see if he is there. He will probably be here in a few minutes.

Mr. TOWNSEND. Can anybody go on until he comes?

Mr. LITTLEPAGE. I do not know of anyone else, Mr. Townsend, to go on in his absence.

Mr. CHARLES J. FAULKNER. I have received a letter from those roads that I represent this morning. It was the first definite information I had received at all in reference to this subject, and the communication stated that it would be utterly impossible for the gentlemen whom I had requested to come before the committee, either to-day, to-morrow, or Saturday, to be here this week. I want to be perfectly frank with the committee. The letter did not state that they could be here next week, and consequently it left indefinite, so far as those I represent are concerned, the matter of their being present at the hearings next week, even if they could be given next week, and therefore I could not ask anything of the committee at this time.

Mr. LITTLEPAGE. Mr. Pierce is thoroughly informed on these matters, Mr. Chairman.

Mr. WANGER. He is the Rock Island man?

Mr. LITTLEPAGE. Yes. He is the general solicitor of the Rock Island, and he has given a great deal of attention to these interstate commerce matters, and has written a book on the subject.

Mr. TOWNSEND. You do not suppose he is going to get that book into the record do you?

Mr. LITTLEPAGE. No, sir; I do not apprehend that he will try to impose on the record in that way.

[At this point Hon. James R. Mann, chairman of the committee, entered the room and assumed the chair.]

Mr. LITTLEPAGE. Mr. Chairman, there seems to be some misunderstanding, probably. Mr. Pierce intended to make an argument this morning. He got back to the city last night, and I apprehend he must be mistaken about the time of the hearing, or something of that

kind. I have sent over to the other room to see if he perhaps has gone over there by mistake, and Mr. Drayton informs me that he is not there. I will try to get in touch with him. He is stopping at the New Willard.

The CHAIRMAN. Who is Mr. Pierce?

Mr. LITTLEPAGE. He is the general solicitor of the Rock Island. I know he expected to make an argument on the Townsend bill. I know I communicated with him yesterday. Those were my instructions then.

Mr. STAFFORD. I wish Mr. Faulkner would repeat to you, Mr. Chairman, what he has already said to us about his clients not being able to appear this week or next week.

Mr. FAULKNER. Yes, Mr. Chairman; I made a statement that I had received a communication this morning from those I represent, in which they stated that it would be impossible for the parties I requested to be here at the hearing to-day, to-morrow, and Saturday on the two bills to be heard this week, and they expressed a doubt in the letter as to whether they would be able to be here next week.

The CHAIRMAN. I understand from that, to be perfectly plain with you, that the railroads are not opposed to the administration bill—your railroad people.

Mr. LITTLEPAGE. I would not say that, Mr. Chairman.

The CHAIRMAN. I am talking about the Senator's people.

Mr. FAULKNER. I have no instructions as to what their position is on the subject, but simply say what I communicated to the committee a moment ago and previously.

The CHAIRMAN. Yes; but we have notified people for weeks that we would hear them at a certain time, and if they tell us they are not prepared to appear, it is obvious that they are not opposed to the propositions. I have never known the railroad companies to lack in diligence in opposing these measures, large or small, before the committee when they were not in favor of them.

Mr. LITTLEPAGE. I can say, Mr. Chairman, along this line, that it was the intention of the Rock Island people to present arguments on this bill. I was notified to that effect yesterday, and Mr. Pierce is in the city for that purpose. You will remember, perhaps, that he appeared before the committee last Saturday, and I know that he intended to be here this morning. I can say that in good faith, because I know it to be true. I do not know anything about the Senator's clients.

Mr. RICHARDSON. Did he have any special features of the Townsend bill in mind that he was going to discuss, or just the whole bill?

Mr. LITTLEPAGE. I think he was going to discuss a number of the features of the bill. The counsel of the Rock Island, I think, was going to discuss the bond feature, and Mr. Pierce the general interstate-commerce features of it. He is a gentleman very competent to do that.

Mr. RICHARDSON. I would like mightily to hear him.

The CHAIRMAN. Mr. Neale, do you appear in opposition to the bills?

Mr. S. C. NEALE. No, sir; I can not say that I appear either in advocacy of or opposition to the bills. The position of the Pennsylvania Railroad is a position of quiescence, not acquiescence.

The CHAIRMAN. What is your attitude, Mr. Paulding?

Mr. CHARLES C. PAULDING. Our attitude is very much the same, Mr. Chairman, as Mr. Neale has said the attitude of the Pennsylvania Railroad is. There are some features about which we would like to be heard later, but I can say practically that at present we have no instructions.

The CHAIRMAN. I do not see where you will have opportunity with reference to these bills later, because we are endeavoring to close up the hearings now as rapidly as possible, and if you wish to be heard—and you do not wish it, I understand now—you must not complain if we do not permit you to do it later.

Mr. PAULDING. Oh, no; I will not complain. I am not in a position now, however, to appear.

Mr. RICHARDSON. You have no objection, then, with reference to the consideration of the bill?

Mr. PAULDING. I have no particular instructions.

Mr. RICHARDSON. You are just here to be informed?

Mr. PAULDING. Yes.

Mr. RICHARDSON. That is a very proper position to be in.

Mr. LITTLEPAGE. Mr. Chairman, I believe if the chairman of the committee would draw the conclusion that all the railroads are not opposed to the bill, it would be an erroneous conclusion. I do not know what the difference between the eastern and the western roads may be, but—

The CHAIRMAN. I do not know why we could not draw that conclusion when we have notified the railroads all over the United States with reference to the bills, and notified their representatives in Washington, and given them ample opportunity to be heard, and when the time comes no one appears for hearing and no one wants to be heard in opposition.

Mr. LITTLEPAGE. Mr. Chairman, the railroads have a lot of very busy men down here, and when they do that you perhaps know they do it at an expense somewhere to their business.

The CHAIRMAN. The railroads can appear and bring in 50 or 60 people in opposition to a bill in relation to car stakes, and a great many witnesses in relation to some other matter of minor importance, and it seems certain that they can not be more busily engaged when a question comes up that it regards as important on the operation of the roads.

Mr. LITTLEPAGE. There is a difference, I believe, in the case of men able to talk about car stake matters and these other matters. A practical railroad man who handles cars can testify on matters relating to car stakes, and the railroads have enough of men to speak on such a question.

The CHAIRMAN. My observation is that it is easier for the counsel of the railroad to get down before the committee than it is for the division superintendent.

Mr. LITTLEPAGE. The only thing I can say further, Mr. Chairman, is that if the committee cares to adjourn over until to-morrow, I can communicate in the meantime with Mr. Pierce and other gentlemen whom I know of who would care to appear. I do not mean to ask the committee for any indulgence, but if they care to adjourn over until to-morrow— —

The CHAIRMAN. Senator, are you prepared to go ahead on any of the bills?

Mr. FAULKNER. No, sir; I do not think of it. There is only one bill, and that is set for Saturday. I will be ready then, and we will be ready on Friday on the 16-hour bill, Mr. Wanger's bill; and we will be ready on Saturday, as suggested by the chairman yesterday, on the claims bill.

The CHAIRMAN. When?

Mr. FAULKNER. Saturday, provided the other people do not take up the time on Saturday on the Townsend and Mann bills. Of course we will have to be subject to that order of the committee.

Mr. STAFFORD. I will suggest, Mr. Chairman, that the representative of the Rock Island——

Mr. FAULKNER. Here is Mr. Pierce now.

The CHAIRMAN. Mr. Pierce, are you ready?

Mr. E. B. PIERCE. Mr. Chairman, I think I owe somebody an apology this morning.

The CHAIRMAN. Do not waste any time on that.

Mr. PIERCE. I told Mr. Littlepage that I expected to be in Washington this morning, and I expected this bill would be on for consideration, and I told him that some time during the day I would perhaps want to make some few remarks on it. I did not suppose there was a set engagement made for me.

The CHAIRMAN. There was no set engagement made.

Mr. PIERCE. I do not care to appear this morning, because I have made no preparation. If the committee will meet to-morrow I will like to appear and be heard then. I have been busy with other things, and have not had time to prepare a statement such as I would like to make if I have anything to say.

The CHAIRMAN. Very well, then. Without objection the committee will adjourn until to-morrow morning.

(Thereupon, at 10.40 o'clock a. m., the committee adjourned until to-morrow morning at 10 o'clock.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Thursday, February 10, 1910.

The committee met this day at 10 o'clock a. m., Hon. Irving P. Wanger in the chair.

Mr. WANGER. The committee will be in order. Is anybody ready to proceed?

**STATEMENT OF MR. E. B. PIERCE, GENERAL SOLICITOR OF THE
ROCK ISLAND AND PACIFIC RAILROAD COMPANY.**

Mr. PIERCE. Gentlemen, I would like to submit a few remarks.

Mr. WANGER. Very well. You can take your position at the end of the table. Give your name to the stenographer and the road you represent.

Mr. PIERCE. My name is E. B. Pierce. I am general solicitor of the Rock Island and Pacific Railroad Company, and my residence is Chicago.

I might say to the committee that the reason I am here before you this morning to make a few remarks on this bill, the Townsend bill—

Mr. WASHBURN. H. R. 17536.

Mr. BARTLETT. The Mann bill and the Townsend bill, that look as though they were trying to do the same thing, though dressed up a little different.

Mr. PIERCE. As a matter of fact, in the last two or three years our company has charged me with the duty of looking after its interstate-commerce litigation, and while I know very little about the subject, at the same time I have had perhaps as much experience as anybody in our law department, and for that reason our company has asked me to make an appearance before the committee.

I have looked through the Townsend bill, so called, and it is in connection with that bill that I would address my remarks. If the members of the committee desire to ask me any questions relating to other bills with which I am not so familiar, I will do my best to answer any questions that may be propounded.

The first six sections of the Townsend bill have to do with creation of a court of commerce. We are not opposed to a court of commerce. On the contrary, personally speaking, I am not particularly in favor of it. I think, however, that perhaps taking the arguments up one side and down the other, a commerce court is a good thing, and perhaps we ought to have a commerce court.

I want to say further in this connection that I am convinced, from the last three or four years' experience, that the interstate commerce law has been one of the most valuable laws upon our statute books. I think it has been one of the most necessary laws. I think that law should be given the most careful consideration with a view to strengthening it at proper places and making it a strong working document, having in view the interests both of the railroad companies and the shippers. I think that the bill is of great advantage to the railroad companies. I think, also, it is of great advantage to the shippers.

Mr. BARTLETT. You mean the present law?

Mr. PIERCE. Yes; the present law and any proper amendment to it; and at the proper time and in the proper way perhaps some amendment should be made to the law. I believe some such law is necessary to protect the railroads against each other. I believe it is necessary to protect the railroads against the shippers, and the shippers against the railroads, and to protect the shippers against each other. The interests are so great and the pressure is so great that I absolutely believe we will not see the time in this country when it will ever be possible to think about repealing some of the most drastic provisions of this law.

I merely state this so that the committee will understand that I am not one of those who are opposed to any legislation on interstate commerce. My experience convinces me that it is necessary, and I believe that the law has done great good, and that our whole aim should be toward a strengthening of that document and making it a workable instrument.

Now, it is for that reason that I think a court of commerce is a good tribunal to create. There are very few lawyers scattered around the country that know very much about the interstate-commerce law. I

am talking about the generality of lawyers. I have had occasion to come in contact with lawyers from New York to California and from the Lakes to the Gulf, because we have been parties to a great many cases in all parts of the United States, and the lawyers as a rule are not very familiar with the provisions of the act. Of course, when a lawyer gets a case he undertakes to inform himself as best he can. It is still more true with the generality of the courts. A great many of these questions are arising in the state courts. Sometimes we have got a question involved in some case before a justice of the peace court, and the conflict in the decisions is very great, and I should think there should be some court that should give special attention to these matters and become expert on the subject so as to get this document, as I say, to the condition of a consistent working document as near as we can. The intricacies of the commerce of this country are such that you can never hope to enact any statute that will meet all the questions that will arise from day to day. You study, and study, and study, and question after question is propounded to you, and yet every question has just a little different shape to it, and you can never, as I say, hope to pass any act that will meet all the questions that will arise in connection with carrying on the vast commerce of this country. Therefore, in order to have some consistent working document, it is going to be absolutely necessary to iron out some of the inconsistencies and some of the incongruities of any act or any law by judicial construction, and whether the construction is right or wrong, it is important that that construction should be uniform and authoritative for the guidance and action of the vast throng of traffic people and shippers in this country who do not know from time to time whether they are violating the law or whether they are not violating the law.

Now I think, therefore, that a court of commerce will go very far to accomplish this important purpose. I think that the court should sit in Washington and sit also in various parts of the United States as occasion may require. But I do doubt whether the constitution of the court as this bill provides for will accomplish the desired end. This bill provides that it shall be made up of the existing circuit judges, five of the existing circuit judges; that the terms of the judges of the court, as it is constituted, shall run from one to five years, and thereafter that the terms shall be each five years, one judge stepping down and out every year.

Now, I do not think that is a good plan. I think it defeats the very purpose that we have in view in attempting to create a court of commerce. This is a great subject, this interstate commerce. It is the most intricate subject that we have to deal with to-day. It involves more phases and more difficult situations—there is more detail to it, it takes a wider range—than any other question coming before the courts. You can in an ordinary replevin suit get from the books what the law of replevin is, or you can get from the books what the law of ejectment is. But the commerce of this country is built up in such a way that every part of the country is in a great measure dependent upon another part, and it is almost impossible for a man to pass upon any rate case, any important rate case involving rates, we will say, from one section of the country to another, without having knowledge of just how the rates are built up all over the country.

I assume that you have given the subject considerable attention, and I have no doubt that you have been astounded by the facts that you have found, showing that this whole rate structure is a relative one, and that our whole commerce has been built up on it, and that when you change one of these factors or change one rate, you immediately find ten thousand other rates in ten thousand other communities claiming the right to the same change, or to some change. So that when a man approaches the consideration of one of these interstate commerce cases, he does not find everything that he must know in the books. He does not find everything that he must know in the records, because if his decision is confined entirely to what he finds in the books and what he finds in the records, he will not be able to decide that case as it should be with reference to the entire interests of the country.

Therefore I say that for this court to be what we want it to be, and what it must be in order to be an effective court, it must be made up of experts, and that the term of office, the term of these judges, must be such as to warrant them in making, as it were, a life study of this subject.

Now, you appoint your first court of five judges. You bring a circuit judge from California, who is only going to remain in this court one year. He can not get a smattering of the subject in one year. He could not even get moved. The judge who serves for a two, three, four, or five year term will be in the same shape. I think it ought to be a life position, and I think the attractions ought to be such as to get the very best men you can get. You should make it a life tenure, and offer some inducements to make that profound study of the subject that they ought to make to have a court that will accomplish the purposes that ought to be accomplished, if we are going to have a commerce court at all. I do not think you can get it by this provision at all. I do not think you can get it. Besides that, I do not see that there is an inducement for a circuit judge to come to Washington for four or five years with the small increase of \$3,000 in his salary; and while in that period he can not make a good interstate commerce judge out of himself, yet during that period he is getting out of touch with his own circuit. It is necessary for our circuit judges to keep in close touch with the laws enacted in their own States, in the States comprising those circuits. It is necessary for them to keep acquainted with the current of events, and it is absolutely impossible for a man to do that if he is coming down to Washington for a period of five years. So that you have an illustration which in my opinion will very largely disqualify a man for service in his home circuit, and you are certain not to get the man who will have time, however hard he may work and however conscientious he may be, to become accomplished in the interstate lines of the country so as to give us just that kind of a court that we should have.

In addition to that you are constantly changing the personnel of the court. You are constantly changing, perhaps, the decisions of the court. There are two sides to almost all of these questions. I do not believe that you can get up a single question under the interstate-commerce act where plausible arguments can not be made on either side of it, and you have got to accept one side or the other. You have got to adopt one line of decision or the other. For that reason the

personnel of the court should be made permanent at once, and should be made up of men, as I say, who will have sufficient inducements offered to them to become that class of experts in this class of litigation that you can not get otherwise than by making the positions just the same of those of other circuit judges.

Mr. BARTLETT. May I interrupt there? Will it bother you?

Mr. PIERCE. No, sir; go ahead.

Mr. BARTLETT. This bill that you are discussing has four classes of cases in which exclusive jurisdiction is given.

Mr. PIERCE. Yes. I have looked at that.

Mr. BARTLETT. That is, for enforcement of penalty, cases brought to set aside orders of the Interstate Commerce Commission, and one in reference to the Elkins Act, and mandamus proceedings?

Mr. PIERCE. Yes.

Mr. BARTLETT. Now, what sort of technical knowledge of rates or anything of that sort would you require a lawyer to have in order to determine the cases that might arise under the exclusive jurisdiction given to the court by this act in those four instances? I thoroughly agree with you about the people you ought to have, that they should be experts, and I think you probably ought to appoint a judge for a longer time than one year; but I do not believe in a life tenure for judges or anybody else.

Mr. PIERCE. It says: "All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money." Now, the Interstate Commerce Commission have very large powers under the act. They have the power to prescribe all forms of tariffs. They have powers to prescribe your accounting rules. They have powers under the interstate-commerce act to do hundreds of things.

Mr. BARTLETT. When a case under that section reaches a judge in the court of commerce, it will have been thoroughly sifted out by the Interstate Commerce Commission and all the facts will be presented by both sides, will they not, if you are going to enforce an order?

Mr. PIERCE. That is entirely true, but if the purpose of this act is simply to get a court that will say that "the Interstate Commerce Commission has passed upon this thing, and we will not look into it," very little would be accomplished by it.

Mr. BARTLETT. That was not the purpose of my question.

Mr. PIERCE. But if you are going to have a court that will go into the consideration of all the questions they have considered in order to come to a conclusion, you will necessarily have to have experts. I dare say there are not ten lawyers in the United States—that may be a small number—but there are very few lawyers in the United States who know anything about the accounting rules of the railroads.

Mr. BARTLETT. Very few of railroad lawyers or anybody else?

Mr. PIERCE. Yes; very few railroad lawyers or anybody else. The Interstate Commerce Commission has Mr. H. C. Adams, an accounting expert, and it has been a lifelong study with him.

Mr. ADAMSON. If you build up a special court where there are five judges and a few lawyers who practice there, and they are the only ones expected to know this thing, you will encourage the idea that other lawyers need not know those subjects.

Mr. PIERCE. That may be, Judge; but what I do say is that these matters are of supreme importance, and everybody can not know them, and they have got to be dealt with by governmental authority, and consequently there must be both on the commission that is dealing with it and on the court that is dealing with it at least expert bodies.

Mr. ADAMSON. I suppose the experts in every business where they had a lawsuit would see to the presenting of all the facts in the suit so that every lawyer and the judge on the bench could understand the law.

Mr. PIERCE. That is true of an ordinary lawsuit, but you can not take one important rate suit or a case involving accounting rules or the tariff rules of the commission, all of which must be made with reference to other rules and with reference to the entire commerce of the country—you can not exhaust that subject in connection with any one case that you have under consideration. It is absolutely impossible, and I do not believe, if you are going to regulate these things by governmental authority, that you should undertake to do it except by expert bodies.

Now, if you are not going to do that; if you are not going to have an expert court, then we are going to a useless expense and to useless trouble in creating this court; because otherwise you might as well leave it to the present judicial machinery that we have already organized, and let them deal with it just as they do now. But if you are going to have one special court, let it be an expert court, and let it be organized along the line to accomplish the purpose you want to accomplish.

Mr. BARTLETT. What provisions would you add that are not contained in the Townsend bill?

Mr. PIERCE. I would add the qualification of life tenure.

Mr. BARTLETT. Yes; and you say we ought to have experts.

Mr. PIERCE. I think you have got to start out probably with men who do not know very much about the subject. I do not know whether or not you could constitute the court at first with experts, but—

Mr. BARTLETT. The point you are pressing is not so much that you should have experts to start with, but that you should select such men as may become experts and give them sufficient tenure so that they will eventually become experts?

Mr. PIERCE. Yes; so that they will work in to the proper qualifications.

Mr. BARTLETT. May I ask you another question?

Mr. PIERCE. Yes, sir; certainly.

Mr. BARTLETT. Some years ago, before the passage of the Hepburn Act, in March, 1906, or in 1904, a plan something like this for a commerce court was very much discussed and put forward by Judge Grosscup. Do you remember what he suggested? In fact, I think he drew a bill and presented it to a meeting of the Manufacturers' Association in 1904. Do you remember what his plan was?

Mr. PIERCE. No, sir; I do not. I remember that Judge Grosscup had a great deal to say about interstate commerce matters generally. He seems to have given the subject a great deal of thought, and at the time the Hepburn bill was up I recollect they had something up there known as the Grosscup plan. But that has been three or four years

ago, and just what the details were I do not remember; I have forgotten.

I think that is all I want to say on the question of the court, unless there is some other question that the committee wants to ask me about.

Now, section 7 of the Townsend bill provides for agreements between the carriers subject to this act, specifying the classifications of freight or rates. Undoubtedly this section was intended to authorize competing railroads to make agreements fixing rates.

Mr. BARTLETT. You mean to allow pooling?

Mr. PIERCE. No, sir.

Mr. ADAMSON. To change the name, merely. "Pooling" is not acceptable?

Mr. PIERCE. Oh, no. This is not pooling at all. This is authorizing railroads to make rates by agreement. The purpose of this section is all right. It ought to be enacted into law, because it is a great hardship upon the railroads and the commerce of the country to say that railroads shall be guilty of committing a crime every time they do things that are absolutely necessary to be done in order to carry on the business of this country. You can not carry it on unless you fix these rates more or less by agreement. I think this section as it is drawn does not mean exactly what it says, or does not say exactly what it means to say, and I think the provisions of it are extremely cumbersome.

Mr. ADAMSON. You think it will possibly permit them to cease competition, do you?

Mr. PIERCE. No, sir; I do not. I think the curse of the country to-day is the competition between the railroads.

Mr. ADAMSON. You do not deny that under that agreement they might agree to quit competing together?

Mr. PIERCE. No, sir; they will compete just as much after this bill is passed as they compete now, because there is not any denying the fact that you can not make the rates of this country without an arrangement of some sort, or an agreement. I take it that this bill is only intended to authorize or legalize just what is actually being done to-day.

Mr. ADAMSON. You do not think they compete much to-day?

Mr. PIERCE. Yes, sir. I think the competition to-day is outrageous. I think the competition to-day is so strong that it is destructive of the interests of the railroads and destructive of the commercial interests, and it certainly results in the greatest economic waste that you could possibly think of. I think the competition between the railroads to-day is so fierce that it is resulting in an economic waste to the shippers of this country which, if estimated and put down in dollars and cents, would startle the whole United States.

Mr. RUSSELL. Do you think the competition between the railroad companies affects injuriously the shipper?

Mr. PIERCE. Well, I will give you an illustration of that. If the railroad companies to-day were permitted or required to provide only those reasonable facilities that are necessary to carry on the commerce of this country, millions and millions of dollars would be saved. Now, to give you a concrete illustration: Between the city of Chicago and the city of St. Louis we have seven competing

lines, the Santa Fe, the Burlington, the Milwaukee, the Rock Island, the Santa Fe, the Alton, and the Great Western; seven important lines.

Mr. RUSSELL. You enumerated the Santa Fe twice.

Mr. PIERCE. Well, there are seven lines now. I may have overlooked one.

Mr. ADAMSON. I was going to ask why it was they competed. It seems that they "bunch their hits" when they are competing, and confine themselves to particular sections.

Mr. PIERCE. We have those seven roads between Chicago and St. Louis. If you will stand in the Union Depot at Kansas City any night about 6 o'clock you will see every one of those roads sending out a brilliantly-lighted passenger train, carrying a dining car and sleepers and chair car and day coaches, and so forth. Every fellow is trying to get the business.

Mr. ADAMSON. At that place?

Mr. PIERCE. Yes; at that place. There is not more than enough business probably to fill up two of those trains, and yet every fellow among them is getting all of it he can, and the chances are that each one of those trains is running with a third of a load.

Mr. ADAMSON. You can tell them when you get home that they can relieve that situation if they will by putting their energies into places where the competition is not so fierce.

Mr. PIERCE. That may be true; but the running of so many trains of that kind, resulting from competition in order to get a share of the business, results in a great economic waste on the part of the railroads, which, of course, falls eventually upon the public. Now, I say if the railroad companies were permitted to pool that business and fill two of those trains comfortably, which would be giving the public all the accommodations necessary, there you would have a great saving. You can do it all over this country. In the freight business it is the same way. You will find competition of that kind between railroads in all the great centers of this country, and I say if the railroad companies were given an opportunity to pool their business so as to shut off this waste and this excessive competition the public would get just as good service and we would save all this tremendous expense that results from this competition.

Mr. ADAMSON. Then you do believe that if this section were adopted it would permit them, by agreement, to cut off competition?

Mr. PIERCE. No, sir. Making rates by agreement and pooling are two different things. They have no relation to each other.

Mr. ADAMSON. One may mean more than the other?

Mr. PIERCE. "Pooling" means that these railroads that I have spoken of between Chicago and Kansas City would be permitted to get together and say, "We will provide two trains to carry these people from Chicago to Kansas City," say, for instance, over the Rock Island and the Burlington, and then apportion the income among the roads so as to save the expense to the public and to the railroads by not running these five other trains. That is what is meant by "pooling." What is meant by making rates by agreement is that these five railroads running between Chicago and Kansas City have necessarily got to have the same rates. You can not carry on the business unless they have.

Mr. ADAMSON. If it does not eliminate competition, and all run along the same without any more business, it would not make any more business if you did agree upon a rate.

Mr. PIERCE. There is just so much business, and every fellow is trying to get the business. Now, in order to eliminate the economic waste that I have spoken of, you can do that by pooling. But the purpose of this section now is to say to these railroads that, "In addition to allowing you to pool your earnings, we will also allow you to get together and agree upon what the rate shall be from Chicago to Kansas City."

Mr. ADAMSON. You mean, agree upon a common rate that will be profitable to everybody, whether you do more business or not?

Mr. PIERCE. Yes.

Mr. RUSSELL. Did I understand that you said, in reference to the seven competing lines between Chicago and Kansas City, that the probability was that a portion of that business was now being done at a loss?

Mr. PIERCE. No. I did not say it was being done at a loss.

Mr. RUSSELL. Then where does the economic waste come in, if the business is not done at a loss?

Mr. PIERCE. By the running of the five extra trains you might be getting a profit on that extra business, and you might get enough of a profit out of it to pay the actual expenses, but it necessarily follows that if you carry all the people who travel between those places in two passenger trains instead of seven you would be saving the running of five passenger trains daily a distance of 500 miles each way every year, and some of them two trains each. You are certainly expending a great deal of money for something that ought not to entail expenditure. The only way that can be remedied is by pooling.

Mr. RUSSELL. The moral of that is that if you are spending a lot of money that you ought not to spend you must recoup the loss in some other way?

Mr. PIERCE. Yes. You have got to get it. These railroads are organized as common carriers. They are authorized to run trains between Chicago and St. Louis and between Chicago and Kansas City, and the law requires them to run expeditious service, and the public does; and if each fellow does not run the very best train, he is out of the business, and if he does do it the public will suffer more than if he does not do it, whereas by pooling their earnings the companies would save a great deal of money to themselves and to the public.

Mr. RUSSELL. I do not think the public would care to see the companies incur an economic waste, but suppose you could save, as you say, the amount of money that is lost in that way. What assurance could we have that it would not find its way into increased dividends instead of lower freight rates?

Mr. PIERCE. You have an Interstate Commerce Commission which is authorized to investigate freight rates and hear complaints and reduce those rates. You have got all the governmental authority that you possibly can have to do that. You are provided against that. I think I have had more interstate-commerce cases than any other man in the United States in the last three years, since the passage of the Hepburn Act, since we have been trying these cases, and if I have ever seen a single case of any importance where the

single issue involved was an unreasonable rate, I do not remember it. It was a question of relation entirely. The rates in this country are not high; they are low. This continual talk about excessive rates and impositions upon the public is a fraud and a farce. It is not so. It may be true that in certain quarters certain rates discriminate, and it may be true that in certain places people have suffered just as much by a discrimination as they would suffer by an inherently unreasonable rate. But in this country to-day we have not got unreasonable rates, and you need not give yourselves any concern, in my opinion, that anybody in this country at any time in the future will ever be called upon to pay an inherently unreasonable rate.

Mr. RUSSELL. Your line runs into the Indian Territory, does it not—from Texas?

Mr. PIERCE. Yes, sir.

Mr. RUSSELL. Do you know what the rate is on coal from McAlester to Fort Worth?

Mr. PIERCE. Well, I have just had a case involving rates from the Hartford mines, and the McAlester mines, and the Henrietta mines, and the mines in Kansas, I believe; involving rates, in fact, from all of those mines to Texas and Louisiana. The differentials and the coal rates to-day from all those points to all Texas points are affected by an order of the Interstate Commerce Commission that can not be changed by the railroad companies by an advance within two years from the date of the order of the commission. Of course it was a very complicated and long case, involving hundreds of rates, and I could not carry the rates in my mind. I do not happen to remember the one you speak of, but whatever rate is in effect to-day from Oklahoma to Texas, or from the old Indian Territory, it is adjusted by this body, which was constituted by Congress to fix rates, and there are none that are put in by the railroad companies.

I will say that in that case there was a very heavy reduction made in some of our coal rates. In fact, they were reduced in some cases lower than we thought they ought to be, but they were put in just as ordered by the commission, and they are in to-day, and they can not be changed except by order of the commission. And whatever the rate is, it a government-made rate and not a railroad rate.

Mr. STAFFORD. What lines did you refer to in speaking a moment ago as to compelling the railroads to run expeditious passenger trains between Chicago and Kansas City?

Mr. PIERCE. I did not mean to be understood as saying that there was any federal law or any state law that required the Rock Island, for instance, to run an eight-hour train from St. Louis to Chicago. What I meant was that the law requires the railroad companies to give expeditious and reasonable service. Now, in the light of those conditions that are built up, that is almost as strong a mandate or direction as saying directly that you must run an eight-hour train, because it has been done so long and by other railroads that if we should undertake to show that a service longer than eight hours was a reasonable service, we could not get an affirmative verdict from a jury.

Mr. STAFFORD. There is no law to compel the Nickel Plate and West Shore to run an eight-hour train just because the Pennsylvania has an eight-hour limited, is there?

Mr. PIERCE. No, sir. Those are special trains.

Mr. STAFFORD. The speed is determined by the character of the road, and the Nickel Plate and the West Shore could not maintain the eight-hour trains because they have not the requisite facilities?

Mr. PIERCE. No. The Nickel Plate has not much passenger business. I suppose any one wanting to travel to Chicago would no more think of taking the Nickel Plate than he would of taking a boat line by way of Newfoundland. You do not hear of it often as a passenger road. The result is that as to passenger traffic it has substantially gone out of business. The only reason that the Nickel Plate is enabled to practically go out of business as a passenger road and not be considered in that category is that there are other roads that supply that service, and the Nickel Plate has enough freight business to make sufficient earnings to keep it going.

Mr. STAFFORD. Those second-class roads carry a certain traffic to New York——

Mr. PIERCE. Yes. They are differential roads that can not compete with the Pennsylvania or the New York Central, and for that reason they have a fare that is a little less than the others, and they are known as the differential lines.

Mr. STAFFORD. Who determines the 26-hour limit, and what was the occasion for it?

Mr. PIERCE. I am not connected with those eastern roads, and I do not know anything about it, except what I read in the papers and the time cards. Who determines it or how long a time it takes to do it, I do not know; but these things usually result from long warfare between railroads.

Mr. STAFFORD. That 26-hour limit has been in existence for a great number of years, and yet it has not been lowered even with the improvement of the locomotive traffic?

Mr. PIERCE. My personal knowledge of passenger conditions between Chicago and New York is limited to a comparatively recent time. These things antedate that time, so that I could not give you much personal information on the subject. But I do know in a general way that present schedules and present conditions have resulted from long and destructive wars in the past between these roads as to what the rates and time should be. For instance, one of these differential lines would say to the New York Central line, "We can not compete with you in time, so we are going to make a fare of \$10 less than you do. We will make up our handicap as to time by a reduction of rate." The New York Central will probably come back and say, "If you will make that reduction of rate, we will give the public not only an expedited service, but we will also give the same rate that you do." In the past destructive wars have resulted, and it is out of these wars that many of the present conditions as to standard time and schedules, and so forth, have come.

Mr. STAFFORD. Are there any differential lines in the territory west of Chicago? I remember the Chicago Great Western and the Wisconsin Central received some differential rates from competing roads, and I wondered if they are still in existence.

Mr. PIERCE. I am pretty sure there are no differential lines west of Chicago. I think they are all on the same basis, and that whatever rates are made by one are necessarily made by the others. Of course it is not necessary to a railroad that it shall make the same rates over

its lines as its competitor, but it is necessary for the protection of shippers.

Mr. STAFFORD. This policy of differentials as to passenger traffic has never been recognized in freight traffic except through pools?

Mr. PIERCE. Oh, yes. There are differential lines now in freight business, taking rail-and-lake routes east of Chicago, and taking water-and-rail routes east through the South Atlantic ports.

Mr. STAFFORD. I refer to all-rail lines.

Mr. PIERCE. No, sir. I do not think there are as to all-rail lines. There is no pooling at this time anywhere.

Mr. STAFFORD. I know that.

Mr. RICHARDSON. There is a subject not directly connected with what you have been discussing. I desire to get your idea of the latter part of section 9, as to that paragraph on page 17 which says, "Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge," etc.

Mr. PIERCE. If you will pardon me just a moment, I am coming over to that presently. I am on my way to that section, and I will take it up later. I would like to finish my discussion on section 7 at this time, before going to that.

Mr. RICHARDSON. Very well; I will call your attention to it later.

Mr. BARTLETT. May I ask you in relation to those seven trains you spoke of as going from Chicago to St. Louis, and the economic waste by reason of the fact that competition requires all seven to be run, whereas if they were able to make an agreement they would be able to save the expense of running some of the trains? You mean less than the seven trains?

Mr. PIERCE. Yes, sir.

Mr. BARTLETT. Probably four trains would carry all the passengers?

Mr. PIERCE. Yes, sir.

Mr. BARTLETT. And at least three of them would go out of business, so far as carrying that particular traffic is concerned?

Mr. PIERCE. Yes, sir.

Mr. BARTLETT. Would not that reduce the employment of laborers and engineers and brakemen and firemen, and everybody of that sort, and the economic waste would be not only in the material that it takes to run the trains, but the economic waste would also extend to the unnecessary employment of people to run seven trains when four would do?

Mr. PIERCE. Well, it requires fuel, and it requires oil, and so on. If the purpose of the law is to make it so as to require as many trains to be run as possible for each passenger and each ton of freight, I do not think the railroads would have any objection to it, provided they were given opportunity to earn rates which would enable them to defray these expenses.

Mr. BARTLETT. How would you determine which of the railroads would run the trains, so that there would not be more than three trains?

Mr. PIERCE. How would you determine?

Mr. BARTLETT. Yes. You say you would run three trains between Chicago and Kansas City or St. Louis instead of seven. How would you determine that?

Mr. PIERCE. Well, if you and I were going to sit down and buy or sell a piece of land, if you wanted to sell me a piece of land or a stock of goods, we would talk over the details of the transaction, and I would ask you to tell me what you thought of it, and I would tell you what I thought of it, and we would talk over the details, and that would be a matter of negotiation.

Mr. BARTLETT. And the railroads that did not run the trains would be entitled to participate in the earnings of those that did run?

Mr. PIERCE. Yes, sir.

Mr. STAFFORD. That is predicated on the idea that the railroad traffic is a monopoly and should be run with that in view.

Mr. PIERCE. There is no reason why you could not be allowed to pool earnings when you must operate under certain restrictions and regulations. It is not intended that there shall be no competition. Let me refer to this: You gentlemen just read the decisions of the court and the Interstate Commerce Commission. For instance, take the yellow-pine cases from your State, Judge Adamson, which were before the commission a few years ago, and from all the territory south of the Ohio River to points north, where every railroad in that territory was a party to the rate, and where they were brought before the Interstate Commerce Commission, and where, after the hearings, the Interstate Commerce Commission fixed the rate. In that case some lines showed that they were not making anything scarcely on that lumber traffic, while other lines showed that the business was probably profitable. That is, the records showed that it was probably profitable. You did not find the Interstate Commerce Commission sitting down in that case and saying to one line that it could get only 3 mills a mile per ton, and saying to another, "We will let you get 16 mills," and to another, "You can not charge but 14." When they came to fix the orders, they fixed a 14-cent rate for every route, regardless of the financial condition of the railroad hauling that traffic. The fact is, they could not have done otherwise.

I cite that to you because it is not the purpose of the law or the understanding of the Interstate Commerce Commission or anybody who knows anything about the working of the interstate-commerce law that there should be different rates, or can be, by competing routes, because if you did, you would not only put the competing roads out of business, but you would also put the shipping interests out of business.

Mr. ADAMSON. Suppose they agree upon a rate, or the commission fixes a rate common to all. Are there not other ways in which they can compete under those conditions? Let the seven railroads you speak of make rates profitable to all of them. Can they not, by means of special equipment and other attractions, induce people to give them traffic? Would not the competition be there, even after you had fixed the rate any way you please? Would not the competition be just as sharp?

Mr. PIERCE. Yes; that is what I was saying. Somebody asked the question about pooling, and I digressed a little and got off on the subject of pooling, which has no reference to this bill. I was simply giving you some ideas of my own, which, perhaps, may be treated by the committee as purely gratuitous and unnecessary. But this is a

general running discussion, and pooling has nothing to do with this section.

To come back now to my illustration. The law to-day does not permit the railroads running between Chicago and Kansas City, taking those as an illustration, to get together and say, for instance, that the passenger rate between those points shall be \$10.

Mr. ADAMSON. Yes; you set out with the idea, Mr. Pierce, that competition was destructive, and you wanted to eliminate the competition. I would allow you to change the name, and I would allow you to dismiss the word "pooling" from the dictionary, and allow you to fix a rate by lot or agreement or in any other way, in fact, to let those roads make a living after dividing the business; and yet after that will not competition still be destructive if they are permitted by different equipment and different inducements to attract trade?

Mr. PIERCE. The mere fact that we may be permitted under this bill to get together and say, "The rate shall be so much," will have no effect on competition. It will be just as strong as before. That is the point, is it not?

Mr. ADAMSON. Yes.

Mr. PIERCE. The competition will be just as strong. As I understand the purpose of this act, it is to permit the railroad companies to say what the rates shall be, but it can not have any effect upon competitive conditions, such as equipment, and the matter of time, and phonographs, and stenographers, and manicurists, and baths, and flowers, and everything they can put in a train to make it attractive.

Mr. RICHARDSON. How do you say this bill intends that the railroads shall fix the rate?

Mr. PIERCE. The bill says so.

Mr. RICHARDSON. Don't you know that this bill takes from the common carrier in effect the power to initiate a rate?

Mr. PIERCE. No, sir.

Mr. RICHARDSON. Are you not mistaken about that? Is it not true that no rate can be changed without the consent of the Interstate Commerce Commission before it goes into effect?

Mr. PIERCE. No, sir. The bill says in another place that upon the filing by the Interstate Commerce Commission of a rate, an increased rate, it may suspend that rate during a period of sixty days until they investigate and ascertain if the advance is reasonable. But the railroad by this bill is in no way deprived of the initiative in making rates.

Mr. RICHARDSON. I want to talk about that when you reach it. You said the bill did not prevent the common carriers from fixing the rate at any time. I do not agree with you about that.

Mr. PIERCE. This section 7 merely says that the railroad companies can get together and agree upon rates. It is not the substance of this section that I am quarreling with or that I propose to criticise. It is merely the form of it. I think that in all fairness to the railroads and in justice to the commerce of the country that ought to be permitted to be done which this section says can be done. But the objection I make is not to the substance, but merely along the line of helping to make this a working document, as I said in the opening of my speech.

It is provided in this section that—

Agreements between common carriers subject to this act specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish shall not be unlawful if a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission; but all provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, and all provisions of this act and any future amendments thereof shall apply to such agreed rates, fares, and charges, and such agreed classifications, and the Interstate Commerce Commission shall have like control over and power of action concerning any agreed rate, fare, charge, or classification, including suspension of the rate or classification before it becomes effective, and pending investigation of its propriety, as if the rate, fare, charge, or classification had been made without agreement, and any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the commission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published.

What this ought to say is, "Agreements between carriers." Railroads to-day who form connecting lines have a right to-day to fix by agreement those through rates. Indeed, it is made the duty of connecting lines forming through lines to fix through rates under the act, and if they do not do it they are violating a duty imposed upon them by the act; and this position ought to be relieved of any uncertainty. If the words "agreements between competing carriers" were inserted in the twenty-fourth line of page 12, so as to make it say just what it is intended to say, it would be well. Otherwise you are going to have some confusion, and you are going to impose upon the railroad companies a great deal of detail, and a burden with respect to through rates that they are now under obligations to put into effect, and which they ought not to be subjected to.

Now, another thing: This says "it shall not be unlawful if a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made." That is a burdensome, unnecessary, and foolish thing to require. They are required, before they can make these changes, under the act, to file their tariffs, showing just what their rates are, when they are going into effect, and all the terms and conditions surrounding them.

Now, some of these tariffs, as, for instance, the transcontinental tariff, or the southwestern tariff committee's tariff that is issued, are, some of them, as large as that book [indicating a large volume]. They are very complicated. What is the necessity of going to the almost superhuman task required by enacting that you have got to file with the commission a copy of your agreements?

The fact is there is no actual written agreement. The gentlemen will probably meet around the table and talk the matter over, and the traffic manager of one road will probably say that "the conditions between A and B are such that the traffic ought to be profitable under such and such rates and conditions." Another man looks on from the standpoint of his road and says, "I can not agree with you on that proposition," etc. But finally it is necessary for all of them to have the same rate under the same conditions, and it is a necessity that they reach a common conclusion. That conclusion is evidenced by the tariff filed.

What is the use of requiring this duplication, this work of supererogation, in filing with the Interstate Commerce Commission all these

agreements, when the railroads to-day and the Interstate Commerce Commission to-day are so burdened with the filing of documents and records that you can not find anything when you want it, and you are spending a great deal of money trying to find room in which to keep the records? It is a foolish thing, because these agreements can not be effective until you file the tariffs. If the railroads are authorized to make an agreement, and if they put the rates in and have the tariffs express the agreement just as fully and effectively as any other document that could be filed, where is the necessity of requiring the great burden to be imposed upon the railroad companies and the Interstate Commerce Commission of keeping superfluous documents? And I want to tell you gentlemen, in this connection, that one of the most serious things that surrounds the railroads of this country to-day is the keeping of records and getting enough employees to attend to the details of the thousand and one regulations that we have to comply with. In my humble opinion you can not to-day operate the railroads of this country in accordance with all the laws on the statute books at this time. If you should furnish every engineer with a lawyer and a library, and if you should furnish every conductor with a lawyer and a library, and if you should furnish every station agent with a lawyer and a library, you could not operate the railroads of this country to-day so as to conform to all the laws that are on the statute books, to save your life. You could not put the Interstate Commerce Committee, I suppose, in charge of any railroad and operate that railroad to-day in conformity with all the laws that are on the national and state statute books, to save your lives.

Mr. RICHARDSON. While you do not object to governmental supervision and control, I take it you do object to governmental interference with the operative workings or machinery of the road?

Mr. PIERCE. I am arguing for effective and sensible control. I am arguing, not against the substance, but the form, of this legislation proposed here. I am arguing in favor of simple machinery. We do not object to control. We need the control. We have got to have control. But you have got to have simple machinery. Now, when you read the report that was made to this committee last year by the Interstate Commerce Commission, where they tell you that within a certain period, I believe, 600,000 tariffs were filed with the Interstate Commerce Commission, so far from being able to tell the Congress of the United States what, if any, advances had been made in freight rates, they could not even tell you the changes that had been made in freight rates. Now, how impossible would it be for you to say to the railroad companies that every rate that is changed must be evidenced in addition to the tariffs filed with the commission by a written agreement setting forth that fact.

Mr. RICHARDSON. That is what I wanted to talk with you about when you reached that place. You said there are 600,000 tariffs filed, as the commission reported, in the offices of the Interstate Commerce Commission. In that connection I would like to ask you about the power that the Interstate Commerce Commission is given in this bill to suspend the rate before it goes into effect.

Mr. PIERCE. Yes; I am arguing for machinery. The substance of this section is right, and it ought to be adopted; but the machinery of it is cumbersome and burdensome, and it would do no good.

Mr. RUSSELL. Do you think there is a conflict between the clause "it shall not be unlawful if a copy of such agreement is filed with the

Interstate Commerce Commission within twenty days after it is made" and the balance of that clause?

Mr. PIERCE. Yes; between that and the clause "and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission."

Mr. RUSSELL. Is there any conflict between the two?

Mr. PIERCE. Oh, no. I am not arguing that there is a conflict. I say the machinery is cumbersome. For instance, the railroads will agree upon a transcontinental tariff carrying thousands and thousands of rates. You say that must be filed with the commission. You say those data must be filed, and then you say that in addition to that you must file your tariffs. If you could only go into the traffic bureaus, the traffic departments of some of these railroad companies and could see how the tongues of these poor fellows simply hang down, and how they are simply worked to death, and how they can not get the room necessary to do this clerical work in, you gentlemen would agree with me on the wise policy I am suggesting of cutting down the cumbersome machinery and making things as simple as possible. I am arguing here for a working arrangement, for simplicity in the method of handling these things which do not in any way interfere with the purposes you have in mind. If we had to follow these agreements by filing tariffs on all these rates and showing all the conditions under which the rates are to be operated, and if these have got to be filed thirty days before the rate goes into effect, what is the use of having 600,000 different agreements on file with the Interstate Commerce Commission, when the commission could not take care of them, and if they did have them they would not be worth the paper they are written on because the commission could not find them?

Mr. RUSSELL. Would there be any way of finding out whether the rate was a great rate or not a great rate?

Mr. PIERCE. What difference would it make when the law says you can agree upon the rate? Whenever you find that the rates between seven different roads, running between the same points, are the same, you can be assured that those rates were put in by an agreement.

Mr. BARTLETT. It was a gentlemanly understanding?

Mr. PIERCE. I do not care what you call it. There is no use in beating the devil around the bush about it. This is a sensible provision, put in here to prevent a man from being accused and convicted as a criminal and taken to the penitentiary every time he does something that is necessary and indispensable in the running of the commerce of this country.

Mr. WASHBURN. Have you any amendment to suggest to section 7?

Mr. PIERCE. I think everything should be stricken out there except to say that:

Agreements between competing carriers under this act, specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish, shall not be unlawful.

I think that everything ought to go out after that. It is burdensome and cumbersome to the railroads and does not do anybody any good.

Mr. WASHBURN. You think that ought to come out?

Mr. PIERCE. Yes; it will certainly create more expense and trouble and confusion than anything that you could put there. Gentlemen, in its present form, this is an unworkable section.

Mr. TOWNSEND. That is, the proposition in this bill is to permit you gentlemen to do directly what you are already doing, unlawfully and indirectly. It permits you to get together and make an agreement as to rates, fares, and regulations?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Now, those agreements can be departed from at any time by any one of the carriers? He is not bound by it?

Mr. PIERCE. No, sir.

Mr. TOWNSEND. That is not a binding agreement, but any one can depart from it?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Now, you say if we allow you to get together and do this it would be to the interest of the public, and therefore that agreement ought to be filed. The platform of the party that I represent declared that it must first be approved by the commission before it can go into effect.

Mr. PIERCE. I am not arguing that the commission ought not to have full information or that the public is not entitled to full information about it, but I am arguing that after that agreement is made the law requires you to publish tariffs showing all the rates and routes and all the terms and conditions under which those rates and routes can be operated, and requiring them to be filed with the Interstate Commerce Commission and at all the stations thirty days before their going into effect. Now, have not the public and the commission got all the information concerning those tariffs that you could give by a possible publication of the agreement? Many of these things can not be reduced to the form of an agreement. It is almost impracticable to do it. The traffic men get out certain lists and tell the tariff clerks to check in those rates. If these rate agreements had to be put in the shape of formal agreements and filed with the Interstate Commerce Commission, I tell you frankly I do not believe it would be possible to do it. I think the task is a superhuman one, unless we could file the tariff itself as showing the agreement, and we are required to do that anyhow.

Mr. TOWNSEND. It does not seem to me that that should be a very difficult matter.

Mr. PIERCE. If there were but one tariff, Mr. Townsend, it would be all right. If I had but one dollar I would not be bothered about counting it, but if I had millions of dollars to count every day, and if in addition to that I had to serve the public and had to appear before state commissions all over the United States, and had to be getting up all sorts of data for the Interstate Commerce Commission, and had to be in court also as witness, and had to be attending to all the numerous demands of the shippers, and all that sort of thing, then it would simply be a physical impossibility for me to do it. If I did not have anything else to do, it would be a very simple matter, but we are getting this machinery so complicated and you are making so many useless requirements and imposing them on the railroads that honestly, I tell you, you are discouraging the rank and file of the clerks. I may say that I come in contact with them. I might say that I am one of them myself. I have been right down with "the boys," and I am talking with you now from the bottom of my heart, not against your regulating, but against the useless burdens that you are imposing upon the railroads.

And I want to say that if you do not get more simple machinery to enable us, who have to do this work, to do it, you are going to be responsible for a good many cases of nervous prostration, and a good many cases of men who are simply wearing their lives out in trying to observe useless detail. That is a fact. I am not giving you any fiction. I am not here talking as a lawyer, telling what somebody else has said, but in the last few years I have been down in the traffic department working these things out, and I know I have stayed in my office night after night, and night after night, trying to work out the form and machinery and the substance of those things that the national and state governments are requiring of us.

Now I ask you to make these things simple. If you compel us to go to great expense and publish these tariffs and publish them all over the country and all over our lines, telling you what the conditions are and the rates, and giving thirty days' notice of it, what is the use of burdening me, as the attorney of the Rock Island and Pacific Railroad Company, with the necessity of having to maintain in our department at great expense a force to duplicate the same information you require to be filed with the Interstate Commerce Commission, giving exactly the same information and nothing more, and requiring that we must follow that up in a published filing of agreements a few days later?

MR. TOWNSEND. Now, Mr. Pierce, these agreements that you enter into now, these agreements that you have with the other carriers, are not complicated, or not so complicated but that each man goes home and puts these agreements in force. Is not that so?

MR. PIERCE. No, sir; they are complicated. It can not be done. They have got to be checked out by the rate clerks.

MR. TOWNSEND. What do you check it by?

MR. PIERCE. For instance, to give you an illustration of it, we have just been engaged in litigation over the actual rates from points in Iowa to Chicago, and before you can ever put in those rates, where you have got lines crossing and running north and south and east and west and northeast and southwest and northwest and southeast, you must recognize the fact that there is great competition, and you have to put in what you call your "cross-country checks." You must check them out in connection with another point, so as not to discriminate or put another point out of line. Every rate is put in as far as possible, but of course since the human mind is fallible and human effort is limited, we do have mistakes and incongruities and absurdities of tariffs. But you have a thousand and one things like that to guard against, and when we say that the rates from the Missouri River to Chicago shall be 23 cents a hundred, and I said that means it can not be put in, on account of the great number of lines or the great number of communities, without being checked carefully and graded down toward Chicago, without this expert check—if you want any information on that ask Mr. Prouty, because he has been putting the experts at work to tell me whether it is practicable to put in a scheme of rates that he himself suggested on account of the "cross-country checks."

MR. TOWNSEND. When you and half a dozen railroad men get together and talk over rates and agreements and each fellow says, "I will do this, and you will do that," practically when you get back to about the same thing, what do you agree upon? Is it an abstract agreement that you enter into?

Mr. PIERCE. There is nothing but the tariff that shows it. There is not any formal agreement. But if you require that this thing be reduced to writing and that it be filed with the Interstate Commerce Commission or any other body, you would really have to create a separate department in every railroad for the purpose of getting up these agreements. It would require such a separate department in the Rock Island Railroad, where we have 8,000 miles, and where rates are reduced as well as advanced, you will understand, and reductions fall within this law as well as advances. There are thousands of changes being made, and I tell you it is not practicable to reduce to the form of an agreement every day all the rate changes that would be made.

Mr. TOWNSEND. You do not have these agreements every day, do you?

Mr. PIERCE. I suppose there are rate changes made every day.

Mr. TOWNSEND. I am talking about agreements. The rate changes are provided for elsewhere or under existing law. I am talking about the agreements.

Mr. PIERCE. They are made every day. I do not suppose the Rock Island is any more able to keep up with the rates than other roads. The Rock Island is in trans-Missouri territory, and it is in southwestern territory and in Louisiana territory and in transcontinental territory, and we can not keep a sufficient force of men to keep up with the rates in all these territories. It is so vast that you probably have not any conception of it, and sometimes it takes the entire force in the traffic department, every one of them, days and days, when they are absolutely compelled to sit down at their tables and work continuously on these changes, and they have no time to give to the public, and no time to devote to any other business, and you can not work it out in any other way.

Mr. RICHARDSON. Does not the Interstate Commerce Commission, even after you make the agreement you are contending for, have the power to supervise it?

Mr. PIERCE. Certainly.

Mr. RICHARDSON. And has it not the power to suspend it?

Mr. PIERCE. Yes, sir; but that is not what I am arguing about. I am contending principally for simple machinery. If this provision will do any good, if it will accomplish any worthy purpose, I would have no objection. But I can not see a single useful purpose that it will subserve.

Mr. TOWNSEND. When the framers of this law put in that particular provision, did they not intend that? Why did they do that?

Mr. PIERCE. I think it was a very foolish thing, just as would be the passage of an act such as: "*Resolved*, That the Mississippi River shall run from New Orleans to St. Paul," instead of running from St. Paul down to New Orleans; because you could just as well have done that as to attempt to prevent by legislation some of these rates being made by agreement, if you choose to call it that. I do not think it is a violation of the law to-day as it is written, but even if you put it as strong as you wish you can not change the actual conditions under which this business has got to be carried on, any act of Congress to the contrary; and if you get an enactment which is contrary to the essential facts of a case, or contrary to what is necessary to be done, that act or enactment necessarily becomes a dead letter on the

statute book; and that is the reason why this committee and Mr. Roosevelt and Mr. Taft and everybody else that has looked into this subject has been in favor of relieving the railroads of the country from the operation of the antitrust law since the decision in the trans-Missouri case was rendered.

Mr. ADAMSON. You might as well reply that all laws directed against crime and immorality should be repealed because crimes and acts of immorality are committed anyway.

Mr. PIERCE. Yes; but here are the things that you are requiring the railroads to carry on: You are requiring the railroads to carry on the commerce of this country, and you are requiring the railroads not to discriminate, and you are requiring the railroads to make reasonable rates, and you are requiring the railroads to make through rates, and you are requiring them to do all these various things which can not be done unless you violate the spirit, at least, of the law, which provides that you can not consult with your competitor about things that are necessary.

Mr. ADAMSON. That is a humiliating defeat for the Government if a law has been passed that can not be enforced.

Mr. PIERCE. I do not think, Mr. Adamson, that you understand my argument, when you spoke of repealing the laws against crime and immorality because acts of crime and immorality are committed notwithstanding the laws. Of course that ought not to be done, because the Government does not require a man to commit a crime. But you do require the railroads to do certain things, and often certain things are only to be done in certain ways in order to do what is required to be done in the way it is required to be done.

Mr. ADAMSON. We undertake to require that the railroads should be run in the way that commended itself to the lawmakers and the needs of the people, and if we are forced to acknowledge that that law is broken because you do not see fit to observe it, that is a humiliating situation.

Mr. PIERCE. I do not want this committee to understand that I concede that we are violating the Sherman law, although, as I have said, it is against good common sense. I think our people are doing a lawful thing under the law as it exists to-day. But there is a constant impression abroad that the railroads are violating the law by making these agreements, and inasmuch as it is recognized that you can not make reasonable rates and you can not prevent discrimination and you can not carry on the commerce of the country without more or less of negotiation and conference between these various competing lines, which may be said to be an agreement, then you are doing the wise and proper thing to propose to change that construction of the law which says that if rates are made by agreement they shall be unlawful.

Mr. RUSSELL. Do these conferences occur at any particular time? Do you give notice to each other of their occurrence?

Mr. PIERCE. I do not believe I attend all of these meetings, but I attend them frequently. Please do not understand that they are secret societies, where you have to tap on the door and give a secret password, or anything of that kind. The shippers are constantly before the committees and request conferences with them. For instance, the Western Trunk Line Committee has a big office in Chicago, and Mr. W. H. Hosmer is the chairman of it. A subject comes up, a

question of a change of some rate, and if a railroad wants to make a change, they do as anybody else does who has got to help carry on this business, and they will say to the other railroads, "We have got in contemplation the making of a certain change." It is absolutely necessary that the other roads should know about it, because otherwise you may create discriminations or throw the entire thing out of line. You have got to protect the shippers as you go along this thing, as well as the railroad, and you have to keep them on a parity; so that, if for no other reason, it is necessary for every road to know what changes are to be made, just as you require a thirty days' notice of all changes to be made, so that conditions can be adjusted and readjusted to meet those changes.

Those gentlemen will get around the table just as you gentlemen are gathered around this table here, and Mr. Hosmer will say, "Gentlemen, such and such a subject is up for discussion to-day," and one man will get up and give his reasons, just as I am doing now, and a gentleman sitting over there, as it were, just where Mr. Townsend is sitting, will get up and spat him with questions, just as Mr. Townsend has been doing to me [laughter], and it will be a kind of conference. It is not really an agreement, as such. If I tell them I am going to put in a rate of 15 cents a hundred pounds on packing-house products from St. Louis or Kansas City to some particular point, they must meet it.

MR. RUSSELL. Do these meetings occur at stated times, at stated intervals?

MR. PIERCE. As a matter of courtesy they usually give a certain notice, so that if any other railroad wants to meet the competition, it can.

MR. TOWNSEND. How many meetings do you have of representatives of the trunk lines in a year?

MR. PIERCE. I suppose they are meeting all the time. If you take the commodities list and sit down and go over it, and take the price list, you will notice that we have Memphis against Little Rock, and Little Rock against Memphis, and Wichita, Kans., against Kansas City, and Kansas City against Wichita, Kans., and Kansas City against St. Louis; and we have those things all the time, and absolutely we require two or three assemblies in constant session to keep up with them.

MR. TOWNSEND. You do not have them, then.

MR. PIERCE. Do not have what?

MR. TOWNSEND. These constant sessions.

MR. PIERCE. We have them constantly, practically.

MR. TOWNSEND. Who is present at these meetings? More than one road?

MR. PIERCE. Yes.

MR. MILLER. Representatives of all of them?

MR. PIERCE. Yes; representatives of all of them. If it is a legal question that we are discussing, a rate involving a legal question, probably I will be there, with the general freight agent of the Rock Island, or some other traffic officer.

MR. RICHARDSON. You say that at these incidental interviews and conferences with and among the railroad authorities, rates are constantly changed, without formality, in the form of a written agreement?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. That is what I do not understand. You say that 600,000 rates are filed by the Interstate Commerce Commission?

Mr. PIERCE. Yes.

Mr. RICHARDSON. And yet this bill puts into the hands of the Interstate Commerce Commission the power of requiring——

Mr. PIERCE. The power to suspend those rates.

Mr. RICHARDSON. No; wait until I get through, please. This bill puts it into the power of the Interstate Commerce Commission to suspend any new rate that is made at any time after thirty days' notice from the railroad that it proposes to make the change? This rate can be suspended for sixty days after the time the railroad proposed to put it into effect?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And yet you think that is leaving to the railroads the right to initiate the rate? That is what you said.

Mr. PIERCE. It is a very limited initiation.

Mr. RICHARDSON. Is it not a fact that the railroad under existing law has the authority to initiate rates subject to complaint by shipper or other parties? But by this bill, if it becomes a law, the carrier can not initiate a rate until it is submitted for approval to the Interstate Commerce Commission. Do you think under such provisions that is allowing the carrier the initiative power?

Mr. PIERCE. That may be said that way. I would not take any issue with you on that statement of the case.

Mr. RICHARDSON. Then the Interstate Commerce Commission under this bill has the right to suspend any rate that the railroads may see proper to devise or ask to put into effect?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And it has the right to supervise it and hold it up really for ninety days?

Mr. PIERCE. Yes; and within sixty days' time it can issue a permanent order to last for two years.

Mr. RICHARDSON. And those rates are changed every day, over 600,000 being annually filed in the offices of the commission?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. Would not that be an endless and impracticable job for the Interstate Commerce Commission to pass upon that many rates, changing daily and hourly?

Mr. PIERCE. Yes. I do not think they can do it. I think it is an impracticable task, and that is another reason why I say you should give the Interstate Commerce Commission simple machinery, as well as the railroads.

Mr. RICHARDSON. Is it not a fact that giving the Interstate Commerce Commission the power to suspend a rate before the rate goes into effect will prevent the railroads from rendering a great many accommodations to the public that they are now freely rendering? Will it not tend to make the rates rigid and immovable?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. They are not going, for instance, to change a rate to accommodate a crowd, and they are not going to lower the rate temporarily for a charitable purpose? If they change they expect to restore that rate when the special accommodation ceases to exist?

Mr. PIERCE. No, sir.

Mr. TOWNSEND. They are not very busy in the lowering of rates, are they?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And they have to take the chances of submitting that law to the Interstate Commerce Commission and everything of that kind suggested by that suspending provision?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And therefore they will never change it?

Mr. PIERCE. There will be more or less changes that will have to be made, but the effect of giving the commission practically the power to initiate the rate, as stated by you, will undoubtedly have an effect of making the rates rigid and preventing the roads changing them except in cases of absolute necessity.

Mr. RICHARDSON. That will be comparatively rare?

Mr. PIERCE. There will be plenty of that.

Mr. RICHARDSON. Under the present law the railroads frequently make those changes in the interest and for the accommodation of the public?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. In certain events and emergencies that occur in the affairs of life, when the railroads will say "Everybody can pass up and down our railroads to-morrow at certain rates"—that never could be done under this rule?

Mr. PIERCE. It would certainly check it very much.

Mr. KENNEDY. It never ought to be done under any condition.

Mr. RICHARDSON. You know it would break it up?

Mr. PIERCE. Yes, sir.

Mr. KNOWLAND. We had a certain rate on lemons, a certain price, and we worked hard to get the price raised, and when we got it raised a cent the railroads raised the rate one cent. [Laughter.]

Mr. ADAMSON. In my friend's instance, there, there was a case where there was a compensatory duty allowed. [Laughter.]

Mr. RUSSELL. Coming back to the matter that we were discussing a moment ago, is it customary for the roads, after they have given notice to the other transportation companies that are going to attend the conference or negotiation, or is it necessary that the negotiation shall be confined to a particular subject about which the notice was given, or when you get in there do you discuss other matters or come to other conclusions on matters not contained or mentioned in the notice?

Mr. PIERCE. So far as I have seen the workings of these committees and the working of this committee here, they look to me very much alike. They just get around the table and have a general discussion. You gentlemen, after hearing all these arguments, get together and come to a conclusion. In our conferences that is the way we do.

Mr. RICHARDSON. Don't we talk to each other afterwards outside?

Mr. PIERCE. Yes; you talk to each other outside. [Laughter.]

Mr. RUSSELL. Would there be any objection to filing with the Interstate Commerce Commission a schedule or docket of matters that you intended to discuss and agree upon if this bill becomes a law—file with the Interstate Commerce Commission such a schedule prior to the meeting?

Mr. PIERCE. I do not think so. There is nothing secret about these meetings. The only reason why I could think they would want to be secret is that whenever a railroad says anything about advancing

a rate, the big shipper who hears about that will punish or attempt to punish that railroad by taking his tonnage away from it, and therefore the shippers use that as a club to keep down rates. It would be an advantage for that reason to have it kept secret as to who proposed that advance in rates.

Mr. RUSSELL. It has been advanced in the hearing here that sometimes the shipper meets with an injury by some conclusion that was arrived at after the notice was sent out and the conference began. If he could file a schedule with the Interstate Commerce Commission, that might meet that objection on the part of the shipping public?

Mr. PIERCE. If you said they could not have a meeting or discuss a matter or make a change until after they had filed a notice with the Interstate Commerce Commission, you would have then even more complicated machinery than you have here. It would not be workable here.

Mr. ADAMSON. When you mention the analogy between your proceedings and those of our committee, I take it as a compliment, an admission that you cleared or acquitted this committee of the charge of conspiracy for having agreed upon anything. [Laughter.]

Mr. RICHARDSON. The spirit of all this remedial railroad legislation, as I understand it, was first to correct abuses in the unreasonable charges of the railroads upon the public, in discriminations and rebates and things of that character, and that has been accomplished, and there is a wonderful improvement. Rebates and discriminations have practically disappeared in matters of transportation.

Mr. PIERCE. Yes, sir. I do not think there is any rebating now.

Mr. RICHARDSON. And now under the Hepburn bill, when a rate is complained of, the commission passes upon it fully and thoroughly, and says whether it is reasonable or unreasonable?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. Now, is it not a fact that, after these things had been accomplished in railroad legislation, every effort on the part of the Government to interfere with the internal management, machinery, and the operation of the railroads is against the interests of the railroads and of the public?

Mr. PIERCE. Yes, sir; it is against the interests of the railroads and of the public.

Mr. RICHARDSON. You are not opposed to governmental supervision and regulation?

Mr. PIERCE. No, sir; I think it is absolutely necessary.

Mr. RICHARDSON. But when the Government goes into something more than mere regulation and control, and goes into the details of the operation and management of the road—that you do not want?

Mr. PIERCE. I think it is absolutely unwise.

Mr. RICHARDSON. And that it is an injury to the public?

Mr. PIERCE. Yes, sir; I think it is. That is illustrated by the next provision in the same section, that I was going to call your attention to.

Mr. TOWNSEND. In that connection I wanted to ask you one or two questions. You do not have any difficulty in understanding what they are trying to get at in these meetings? You have in mind what things you discussed in those meetings and you know what you finally concluded upon them?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Is it going to put you to a great deal of trouble to tell about that? Have you a secretary or reporter to take down what is done?

Mr. PIERCE. These things are all evidenced by the tariff as it is worked out. It is not put down in any other form than as the tariff is worked out and printed. That is the only evidence that I know of, of the agreement.

Mr. TOWNSEND. The traffic manager of the Rock Island Railroad when he leaves that meeting, knows what has been agreed upon right there?

Mr. PIERCE. Yes; he knows what has been agreed upon.

Mr. TOWNSEND. He knows what the object of that meeting was?

Mr. PIERCE. Yes.

Mr. TOWNSEND. There is nothing about that that you regard as unlawful or detrimental to the shipping public?

Mr. PIERCE. No, sir.

Mr. TOWNSEND. Then it ought not to take, it seems to me, a great while to report that agreement, which you all understand, and understand without any difficulty at all; the object being, as of course you understand, to prevent the collusion of railroad managers on any matter detrimental to the rights and interests of the people. You say that it is not detrimental?

Mr. PIERCE. This would not prevent that. If you had a provision in here to say that these agreements could not go into effect except under certain conditions named in this section, then there would be something to the point you are making. But you legalize the agreement now. Whether made by collusion or not, or whatever the effect is, there is nothing there to keep the agreement from being made, and the agreement is being made lawful until the rates or practices agreed upon at that meeting are held up by the commission.

Mr. TOWNSEND. But this is for the express purpose of allowing the railroads the widest possible latitude, for which Judge Richardson was contending there?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. Now we say that those agreements should be made public, since publicity is the best protection that the public has. We say that they should be made public before they go into operation.

Mr. PIERCE. Well, there are thirty days before they go into effect. When you file the tariff, that tariff contains absolutely more in detail the result of that conference than any agreement that has been made could possibly show. The public had thirty days' notice of it, and the commission by initiative or on complaint can suspend that rate.

Mr. TOWNSEND. When we are trying to find the method you gentlemen employ in constructing tariffs and making agreements as to rates and other regulations, we say and, we think, properly, that if we are going to regulate at all we ought to be posted, and the commission ought to be posted as to what agreements you have entered into. That is the whole object here. We are taking you at your word that they are all proper. We say it shall be legal, then; that it shall be proper that you shall get together.

Mr. PIERCE. I am not arguing against giving any information that the commission ought to have, or doing all the work that is necessary.

I think you ought to have and the commission ought to have all information needful. I think there should be provision made so that these things can be made public. Now, if I am wrong in my conclusion, based upon my experience as to how these things are done and the amount of work it would take to comply with this provision—if I am wrong in my estimate of the great burden that would be placed by this enactment upon the railroads and the commission in complying with this as compared with the benefits to be derived from it—then I waive the argument.

Mr. RICHARDSON. This bill really makes the agreement lawful?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And then it follows it down the line and proceeds to encumber it with so much machinery and difficulty that it destroys the good effects?

Mr. PIERCE. Yes, sir. That is the argument I make.

Mr. RICHARDSON. I understand. When you speak of filing rates do you speak of filing them with the Interstate Commerce Commission?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. How often is that process gone through with, ordinarily, by a railroad in the course of twelve months?

Mr. PIERCE. It is so frequent that I could not give you an estimate. We have a tariff department up there, and we run our printing presses night and day.

Mr. RICHARDSON. After you once file it with the Interstate Commerce Commission the common carrier can not run on a lower or higher rate than that put in, unless he gives a notice of thirty days, and the commission has the right to hold it up sixty days longer? Is that correct?

Mr. PIERCE. Yes; so that you have got all that you can possibly give to the public by these provisions.

Mr. RICHARDSON. The public is fully protected and notified?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. And the burdensome part of it is unnecessary, so far as the public is concerned?

Mr. PIERCE. Yes, sir.

Mr. RICHARDSON. It is simply loading down the railroads with something that is of no benefit to the public?

Mr. PIERCE. Yes, sir. That is what I am arguing. It is a serious question with us.

Mr. BARTLETT. You refer to the continuous and constant sittings of these gentlemen who represent the railroads for the purpose of devising rates and rules and regulations. You might call that a continuous convention for the purpose of inventing some means of getting around the hardships of the law, could you not?

Mr. PIERCE. No, sir. It is not necessary to get around the hardships of the law. It is done for a very simple purpose. The legislation of this country as to railroads could not be any better illustrated than by referring to Congress as a means of legislating for the benefit of the country.

Mr. WANGER. Would it be convenient for you to suspend now until 2 o'clock this afternoon?

Mr. PIERCE. Yes, sir. I have already taken longer than I intended. There are two or three more things I would like to say, and in addi-

tion to that we have another representative, Mr. Walker, who would like to make a statement.

Mr. WANGER. Very well.

(Thereupon, at 11.45 o'clock a. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee met pursuant to the taking of recess at 2 o'clock p. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. You may proceed.

STATEMENT OF E. B. PIERCE—Continued.

Mr. PIERCE. When the committee adjourned at noon we were talking about the provisions of section 7 of the Townsend bill, and there was just one other thought that I wanted to offer before I conclude on that proposition. I want to restrict very much my remarks this afternoon so as to conclude at least by or before 15 minutes to 3, because Mr. Walker, the chairman of our executive committee, is here and desires to make some statements with respect to the financial features of this bill. So I will cut my remarks short in order to let him have the floor.

I direct your attention now to line 17, page 13:

And any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications, by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the commission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published.

The way that is written it would probably conflict with certain provisions in section 6 of the act which authorizes changes to be made in rates upon less than thirty days' notice. In the making of schedules and the putting into effect of rates, very serious conditions arise sometimes, and it is very necessary that the commission should be invested with power to permit changes upon less than thirty days' notice.

If this bill is passed in its present form, it probably means, or could be construed to mean, that when one of these rates is fixed by agreement it would have to remain in effect for at least thirty days. It is not very clear as to just how it would work out, but it would have to remain in effect thirty days. Contingencies may arise, important contingencies, and power should not be taken away from the commission to permit the change of an agreed rate any more than the power should be taken from it to change any other rate.

Mr. TOWNSEND. That thirty days' notice refers, as I understand it and have understood it, to the right of a party—one of the railroads—to the agreement to withdraw from that agreement?

Mr. PIERCE. Yes; but then it says:

And any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing.

Now, this certainly does not contemplate the changing of that rate by the filing of a supplement to the tariff, because if it does it con-

flicts with all of the rules of the commission as to how supplements shall be filed.

Mr. TOWNSEND. This agreement is not intended to affect any existing rate. If the language is not proper, it should be corrected; but it is not intended that the agreement shall affect any existing rate or in itself stand as a legal rate to be published.

Mr. PIERCE. This means to say, as I understand it, that where railroads agree upon rates, as they are authorized to do under this section, that that agreement shall be binding for at least thirty days.

Mr. TOWNSEND. So far as the carriers among themselves are concerned.

Mr. PIERCE. So far as the carriers among themselves are concerned, and it will not be permissible for any carrier who, for any reason, decides to withdraw from that agreement, to do so except by giving the thirty days' notice. That is the way it reads to me. That seems to me to be the plain intendment of the language.

Mr. TOWNSEND. Yes.

Mr. PIERCE. Suppose the carriers do make these rates by agreement, and file tariffs, as provided by law and in accordance with the rules of the commission, and those rates go into effect, say, for two days. Some condition may arise or some contingency may arise where it is found those rates are actually working a discrimination. Some contingency may arise where they ought to be changed immediately, but if under the language of the act the parties can not change those rates except after giving thirty days' notice, it means that they have to remain in effect for thirty days.

Mr. TOWNSEND. Do you think that would prevent the changing of the rate under permission of the commission in extraordinary cases, when this does not fix a rate? This, as I understand it, is simply an agreement among the carriers as to fixing rates in the future, or something like that.

Mr. PIERCE. If it does not mean what I have stated it means, that the other party to the agreement is entitled to thirty days' notice of a withdrawal from that committee, why then the point I am trying to make is not well taken, and there is nothing in it. But I am merely, as I stated this morning, trying in a proper way to help the committee as far as I can to get a working document.

Mr. TOWNSEND. Would you prefer that no notice should be given at all; that a carrier can draw out of that agreement any time he sees fit?

Mr. PIERCE. Yes, sir; in the manner now provided by law. You can not cancel any rate now except by thirty days' notice, but the commission has power upon proper showing and for sufficient reasons to permit us to cancel a tariff upon three days' or one day's notice. If you will examine the records of the commission, I think you will find that is being done every day in a great many cases, because many reasons exist why it should be done and the commission finds it necessary to do it.

The CHAIRMAN. Supposing two railroads have entered into an agreement at some meeting point in accordance with this provision; is there any obligation on the Government to enforce the agreement?

Mr. PIERCE. No, sir; there is no obligation on the part of the Government to enforce the agreement; but when the carriers have agreed and when the carriers have filed their tariffs, as they must do

in order to put into effect this agreed rate, then this act says, in section 6, that you can not change that rate except upon thirty days' notice by a published tariff in accordance with the act and under the rules of the commission.

The CHAIRMAN. There is nothing in the act.

Mr. PIERCE. Yes, sir; in section 6.

The CHAIRMAN. I am trying to get what your assumption is, to find out whether you claim that is the case.

Mr. PIERCE. I am not making any assumptions. I am stating section 6 of the act.

The CHAIRMAN. Let me ask you a question and we will find out. Supposing the two carriers have made the agreement, the Government being under no obligation to enforce it; can not either one of the carriers break the agreement any time, so far as the Government is concerned?

Mr. PIERCE. They can break the agreement after giving thirty days' notice.

The CHAIRMAN. No; can they not break the agreement before? They cancel the agreement after giving thirty days' notice?

Mr. PIERCE. No, sir; they can not break it before thirty days.

The CHAIRMAN. Why not?

Mr. PIERCE. You could not break it even if this provision in this amendment was not in the act, because before you can break the agreement you have got to withdraw those rates in accordance with the law. No carrier can nonconcur or withdraw from a tariff, even on a joint through rate, except upon thirty days' notice filed with the Interstate Commerce Commission.

The CHAIRMAN. Except by authority of the commission.

Mr. PIERCE. Except by authority of the commission.

The CHAIRMAN. Take the exact case; let us confine ourselves to a concrete case. Here are two railroad companies that have made the agreement.

Mr. PIERCE. Yes, sir.

The CHAIRMAN. To-day. Can not either one of them to-morrow, without regard to the agreement at all, file new tariff sheets with the commission?

Mr. PIERCE. Yes, sir; but what I am arguing is that the probable effect of this language is to deprive the commission of the power to permit the carriers, after the rate has become effective, to cancel that agreed rate except after thirty days.

The CHAIRMAN. It seems to me what you are arguing is that the Government is under obligation to enforce the agreement. The proposition is, as I understand it, to permit the carriers to enter into an agreement.

Mr. PIERCE. Yes, sir.

The CHAIRMAN. With such penalties, I suppose, as they may agree upon among themselves in regard to breaking it?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. But either carrier, as far as the Government is concerned, may break the agreement any time. They can cancel the agreement, under the law, by giving thirty days' notice.

Mr. PIERCE. Yes, sir; but I say the effect of this provision here is to prevent the Interstate Commerce Commission from giving its sanction to the breaking of that agreement in less than thirty days,

although as to the other rates they can permit them to be canceled on three days' notice or one day's notice; and if certain contingencies arise a great hardship will be worked both upon the railroads and the public if that power is taken away from the commission. If this language is susceptible of the construction that agreed rates can be canceled just as quickly as joint through rates can be put in now by carriers, then, as I say, there is nothing in my argument.

But I have read this provision very carefully, and if I understand the English language, I do not believe that the power will remain in the commission to permit the effectual canceling of agreed rates in less than thirty days.

The CHAIRMAN. Do you think that two carriers or more could make an agreement under this provision with penalties in it against breaking it?

Mr. PIERCE. You mean the penalties as against each other?

The CHAIRMAN. Yes.

Mr. PIERCE. Why, yes; if the law authorizes them to enter into contracts with reference to these competing rates, there certainly does not occur to me at this time any reason why they could not attach penalties against each other for breaking that contract, but that does not have any relation to the question here. You will find there never will be any penalties in any of those agreements.

Mr. KENNEDY. This agreement does not make a rate.

Mr. PIERCE. Certainly not; that is what I am arguing.

Mr. KENNEDY. It seems to me you are on that side part of the time, and then you get over on the other side.

Mr. PIERCE. No, sir.

Mr. KENNEDY. The making of these agreements will not put any rate into operation, and the cancellation of the agreement will not necessarily cancel any rate?

Mr. PIERCE. Here is the operation of it. Two carriers agree upon a rate as between themselves. That rate does not go into effect until each has filed it. As you say, that agreement does not make the rate. After the agreement is made, then that agreement in order to become a rate must be embodied in a tariff to which the contracting railroads are parties and filed with the Interstate Commerce Commission and in all the stations and other places required to be filed, and there remain on file thirty days before it becomes effective.

Now, we have got a rate in effect. One of the carriers, we will say, decides to-morrow that it wants to cancel that arrangement. Then there would be good reasons why it ought to be canceled and there would be reasons why the commission would lend its sanction to the cancellation of it. This act says that the agreement may be canceled as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission.

The giving of thirty days' notice in writing to the Interstate Commerce Commission and to the other party does not cancel the rate. It still takes the filing of a tariff in accordance with section 6 of the act, or an amendment to the tariff or a supplement to the tariff, printed in accordance with the rules of the commission, which must remain on file thirty days before the rate can be canceled.

If two carriers to-day publish a joint through rate and it goes into effect thirty days from now and on the second day after it goes into

effect it is found absolutely necessary to cancel that tariff for some reason, the commission now has power to grant authority to cancel that tariff upon any short notice that they may see fit to give—usually three days' notice.

What I am arguing is that these agreed rates by the necessary effect of this language are tied up for thirty days and that the commission can not, by giving its consent, permit the cancellation of agreed rates. I am merely pointing out that that in certain cases might work very great hardship—a greater hardship upon the public than upon the railroad companies, and that some leeway should be given to the Interstate Commerce Commission to cancel agreed rates upon short notice, as they now have authority to permit any other kind of rates to be canceled upon short notice.

If my reading of the act is not correct and if this language is not susceptible to that construction, then what I have said amounts to nothing.

The CHAIRMAN. Supposing the carriers have made the agreement and without canceling it one of the carriers files notice of a change in the tariff. Is that a violation of the agreement? Does not the new tariff go into effect at the proper time?

Mr. PIERCE. I did not catch the first part of your question.

The CHAIRMAN. Supposing the carriers have made an agreement?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. Agreeing upon a certain rate, and one of the carriers in violation of the agreement filed a new tariff sheet changing the rate, which controls, the rate or the agreement?

Mr. PIERCE. As to the public, the tariff will govern, the published tariff.

The CHAIRMAN. Then the tariff governs as to everybody?

Mr. PIERCE. Yes, sir; the published tariff with the Interstate Commerce Commission governs as between the public and the railroads. That fixes the rate and the only rate that can be charged. But as I said a moment ago, the mere making of an agreement does not make the rate. It takes first the agreement and subsequently the filing of a tariff with the Interstate Commerce Commission for thirty days before the rate becomes effective.

The CHAIRMAN. If the railroad company, in violation of the agreement, can make a rate——

Mr. PIERCE. In violation of which agreement?

The CHAIRMAN. There is only one agreement.

Mr. CALDER. With the other railroad.

The CHAIRMAN. Makes a rate in violation of the agreement which takes effect. Why can not they file it with the Interstate Commerce Commission?

Mr. PIERCE. They can not make a rate or cancel a rate in violation of the agreement.

The CHAIRMAN. Supposing they do it?

Mr. PIERCE. They can not do it, for this reason, that under the rules of the Interstate Commerce Commission each party is required to file a written concurrence.

The CHAIRMAN. That is not the case at all. Here are two railroads that are competing at a competing point. They file their rates separately. There is no connection in filing their rates. They both have an agreement that the rate shall be \$1, but one of them files a

notice the day after the agreement is made that at the end of thirty days the rate shall be 90 cents in conformity with law. The 90-cent rate will go into effect?

Mr. PIERCE. If the tariffs are filed.

The CHAIRMAN. I say if filed in conformity with law.

Mr. PIERCE. If the tariffs are filed the rate will go into effect.

The CHAIRMAN. Notwithstanding the agreement?

Mr. PIERCE. Yes, sir; notwithstanding the agreement. They go into effect now if the railroads to-day, notwithstanding the state of the law, get together and make an agreement which is in plain violation of the law, and file the tariffs, they go into effect as between the public.

The CHAIRMAN. As between everybody?

Mr. PIERCE. Yes, sir; as between everybody.

Mr. KENNEDY. Suppose we pass this bill in its present form, do you think one carrier can not be given a status in court to compel specific performance against another of one of these contracts?

Mr. PIERCE. If this language means that the carriers can make a valid agreement for rates for thirty days, then perhaps a bill of this kind would lie. But I am not so sure whether that is a sound proposition of law or not. Unless this agreement is forced by the terms of this act to remain in effect for ten days, under my view of the law I do not believe it is permissible for any carrier to make any contract to continue any particular rate for any given time, because I think such a contract is against public policy. The railroads all owe a duty to the public to charge reasonable rates, and only reasonable rates, and to keep themselves in position at all times to change or modify those rates so as to conform to the law and to their duty to the public. Any contract which would have a tendency to prevent them from changing their rates from day to day or any practice that ought to be changed, to make those rates reasonable or those practices reasonable, is, in my opinion, an unlawful contract and against the public policy.

Now, the next section I want to take up for just five minutes, as I see I have but five minutes left, is section 8, which has reference to furnishing a quotation of rates in writing. Beginning on page 15, with line 1, this act says:

It shall be the duty of every such railroad corporation to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name posted in any station, it shall be sufficient to address such request to "The Station Agent of the ——— Company at ——— Station," inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.

Now, the effect of that provision is to permit any person at any station to ask for a quotation between any points either on its line or to any points off of its line covered by through tariff. Suppose that a shipper at Ruston, La., a point on the line of the Rock Island, should drop into our station and ask for a quotation of rates on a shipment that he had in contemplation or desired to make from Topeka, Kans., to McFarland, Kans. I take it that under the broad language of this act that would be permissible. If that is permissible, it is a requirement that can not be complied with. Neither the Rock

Island Railroad nor any railroad could keep on file at every station on its line of road every tariff which it publishes alone or in connection with any other railroad. Regardless of how strict the requirements of the law were, it would necessitate such an expenditure of money as would absolutely bankrupt it. The number of tariffs, the volume of them, the expense of keeping them is so great that you would have to have a separate office building for a complete file of the tariffs of the Rock Island Railroad of that kind. I say that it is absolutely a ruinous provision. It is absolutely unworkable, and it can not be complied with, because, in the first place, you could not get the room; you could not supply the room at your stations without the building of new offices; you could not keep these tariffs without a force of clerks and experts to do it. We have not got a station agent on our line that could perform half of his duties and attend to this. There is not a station agent that could half take care of such a file.

The CHAIRMAN. Can not they telegraph to headquarters? They know enough to do that?

Mr. PIERCE. Oh, yes, sir.

Mr. TOWNSEND. There is somebody on your line that knows that rate?

Mr. PIERCE. Yes, sir; but this says it shall be the duty of every railroad to keep at all times conspicuously posted the name of the agent.

The CHAIRMAN. To whom application may be made.

Mr. PIERCE. Yes, sir; to whom application may be made. But it ought not to be that we have to quote rates all over the United States. We have got a file of tariffs there now at every station applicable to that station.

The CHAIRMAN. If a man makes application to your railroad agent, can he not ascertain from the central office what the rate is? Is not that feasible and practicable?

Mr. PIERCE. Well, I suppose they could use the telegraph wires for that purpose by telegraphing to Chicago.

The CHAIRMAN. Is not that what they do now very often?

Mr. PIERCE. Doubtless they have to do that very often because sometimes the station agent is not himself able to decipher from the tariffs what the rate is. He gets a complicated situation, and it sometimes takes a pretty accomplished fellow along this line to do that.

The CHAIRMAN. Then this would not require an office maintained in every village or at every station equipped to give this information, I take it? If you have a central office prepared to give the information and your agent is applied to for the information, is it not perfectly practicable for him to apply to the central office for the information?

Mr. PIERCE. It is not a reasonable requirement.

Mr. TOWNSEND. In other words, you are doing just what you do now, only they are compelled to quote correct rates?

Mr. PIERCE. Yes, sir; but this is even broader. It is required now that tariffs applicable to a certain station shall be kept on file in that station, and we are not required to quote the rates. A man can go in there and ask for the tariff and see it. We are under no obligation at Ruston, La., to furnish rates between Topeka, Kans., and McFarland, Kans., as we would be under this provision. The chances for

a mistake and the burden that might be placed, I say, is an unreasonable burden, and there should not be any such requirement. If we are required to quote rates correctly then it ought to be at stations from where the man is going to make shipments, and where you require the tariffs now to be on file applicable to that shipment.

Mr. TOWNSEND. Of course you know it does refer to a described shipment?

Mr. PIERCE. Yes, sir; it refers to a described shipment.

Mr. TOWNSEND. And if a man comes in to-day and asks for it, you will try to furnish the information?

Mr. PIERCE. Then it should be limited to inquiry to be made at the station from which or to which the shipment is to be made.

There is another thing in that section that it seems to me ought not to be. This requires that you shall keep this notice posted up as to the agent. There is no penalty provided in connection with that, but under another section of this act the penalty would be \$5,000 for failure to post that notice, although you have provided another way to make the notice sufficient in case this notice is not posted. It is not practicable to keep this notice posted at all stations. We can not keep our tariffs posted there and the Interstate Commerce Commission recognizes that fact and has been compelled to modify the provisions of section 6 so as to relieve us of the necessity of posting tariffs in the stations. You can not keep your tariffs posted in the stations. They will not stay there if you post them there, and it has been demonstrated that it is an utter impossibility to do it. These notices will be torn down, and in addition to that the agents are changed so frequently that it would be a practical impossibility to keep up with these changes in these notices.

Now, you have provided an effective way here by which you can address this notice to the agent. For failure to keep one of these notices posted you impose upon the railroad company a penalty of \$5,000. That is another one of the details and the burden of the regulation of an immaterial matter which it seems to me ought not to be, because if there is to be any penalty for a failure to keep these notices posted, certainly \$5,000 is all out of proportion to an offense like that, which can not harm anybody, when you have provided another way for him to get that information and lay the proper foundation for a penalty in case he refuses to furnish it.

The CHAIRMAN. The fact is, you have gotten out of posting notices anywhere.

(At this point an informal recess was taken to enable the members of the committee to respond to a roll call, after which the session of the committee was resumed.)

The CHAIRMAN. Gentlemen, you may proceed.

STATEMENT OF ROBERT S. WALKER, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

Mr. WALKER. My name is Robert S. Walker, and my duties are as chairman of the executive committee of the Chicago, Rock Island and Pacific Railway Company.

My appearance is in reference to sections 12 and 13 of H. R. 17536, introduced by Mr. Townsend, and to sections 9 and 10 of Mr. Mann's

bill, H. R. 16312. The first proposal prohibits in certain cases the acquisition by one railroad company of the stock or property of another; the second provides for the regulation and restraint of the issuance by railroads of their stocks and bonds.

I believe these proposals to be so new, so serious and so pregnant with consequence, that it is my duty to submit to your committee divers reasons why such legislation should be enacted, if at all, only after patient consideration of its many grave aspects.

Let me say at the outset that I am, by inheritance and by training, a believer in the interstate-commerce act as thus far enacted. The carriers of the country must be required to adjust themselves to the policy, adopted by the Federal Government in 1887 and of increasing importance with the growth of the gap between large businesses and small ones, that all shall be served alike and at the same rate. All railroad men yield without demur to the successive applications of this principle. Speaking for myself, every degree of regulation of rates and of service, no matter how drastic, as long as the essentials of equality to the shippers and just remuneration to the carriers are kept uppermost, is for the best good of the nation and the railroads alike.

It is the spirit of our institutions that all businesses and all men engaged in business or professional activities shall be free and unfettered. We have inherited from the earliest days of the common law an abhorrence of arrangements resulting in restraints of trade. Our markets and our intercourse between citizens are absolutely unhampered. Such restrictions as we deem permissible are only those of the nature of police regulations, affecting a few that the general good of all may be enhanced. Congress should depart from these fundamentals with great caution. A step backward would be the beginning of a new Russia in this hemisphere.

Now, note the intent of section 12 of Mr. Townsend's bill. It prohibits every railroad from acquiring the stock or property of any other railroad. This is nothing short of enacting that no man shall buy the house or the farm of any other man. It puts the nation in the position of restraining trade to a far greater degree than was ever attempted by any human being or corporation. It robs the public in advance of the saving and advantage that always follows the absorption of one line by another, accruing from decreased expense of superintendence, greater aggregate supply of equipment to adapt to the needs of the enlarged mileage, increased uniformity of operation, and better opportunities to improve the property out of the combined resources.

MR. TOWNSEND. You do not understand that to mean that there is a prohibition of dealing in stocks of every railroad?

MR. WALKER. I am coming to that in a moment. I think that is open to that interpretation. We must not fear mere bigness. It would be far worse to substitute static conditions for dynamic. It will hurt the public, much more than the owners of railroads, to take away the incentive to increase railroad systems and to upbuild and improve them. Capital can, of course, seek other fields, but the lack of interest in railroads by the men of large means and large views will soon show itself in neglected equipment, perilous roadbeds, and wretched operations. Beyond all this, however, the most portentous feature is the curb and restraint to be put upon initiative and ambition.

At the risk of disagreeing, let me add that I am taking section 12 at its most extreme meaning. It is the meaning that I believe to be the correct one, though other lawyers have other views. To my mind, the language seems as broad as its counterpart in the Sherman Act, "Every contract * * * in restraint of trade or commerce." Mr. Townsend's phrase is to the effect that no railroad shall acquire the stock or property "of any railroad corporation which competes with such first-named corporation respecting business to which said act to regulate commerce, as amended, applies." As every carrier competes in such business with every other carrier, every conceivable acquisition is forbidden. For example, the Denver, Northwestern and Pacific, as part of a through route from Chicago to Steamboat Springs, formed in conjunction with the Burlington route, is in competition with the Rock Island as part of another through route from Chicago to Steamboat Springs. Hence neither the Burlington nor the Rock Island must buy the Denver, Northwestern and Pacific, though it is a natural extension of each and in nowise parallels either. Again, the Louisville, Henderson and St. Louis, as part of a through route in conjunction with the Chesapeake and Ohio from Washington to Kansas City, competes with the Missouri, Kansas and Texas as part of another through route via the Baltimore and Ohio between the same points. Hence the "Katy" must not purchase the Louisville, Henderson and St. Louis, though it is an obvious extension of its route and in no sense parallels it. Instances can be multiplied. Suffice it to say, that the clause is so inclusive that no one can foretell what, if any, limitations the courts will put upon its meaning. Were I advising a client, I should tell him the words could mean all that I have indicated. How unjust it would be thus to prohibit railroad acquisitions can be readily apprehended if we image the restriction extended to all other enterprises. No tanner may buy another tanner's business; no miner may buy another mine; no farmer another farm.

I do not know that the language in Mr. Mann's bill is less severe. It would, in my judgment, however, admit of greater latitude of interpretation. The words are "any competing common carrier," which might be taken to imply parallelism as well as competition in business covered by the Hepburn Act.

MR. TOWNSEND. Now, you are speaking of the acquisition of a railroad and not part of the stocks as an investment, or anything of that sort? Your criticism applies to the acquisition of a railroad?

MR. WALKER. Either stocks or property.

MR. TOWNSEND. Would your criticism lie simply against an investment of stock of another railroad without the idea of owning it?

MR. WALKER. Well, I have not looked at your bill from that point of view.

MR. TOWNSEND. You referred to section 13, and section 13 refers to the acquisition of railroads?

MR. WALKER. I mentioned both. I refer to either stock or property. I do not know that the language in Mr. Mann's bill is as severe. It would apparently admit of some greater latitude of interpretation. His words are "any competing common carrier." This might be taken to include parallelism as well as competition in business covered by the Hepburn Act.

Even if the words finally enacted cover only lines that are both parallel and competing, I do not now wish to concede that the policy of such a law would be sound or wise. What we are working for is low rates and good service. If there are three parallel lines, for instance, the acquisition of one by another does not destroy competition as long as the third remains separate; and at the same time such acquisition will result in many economies that will tend to bring down rates on the detached third line. Economists, indeed, have long argued that compulsory combinations are the true remedy for our difficulties. By such a method, the public would be saved the expense of duplication of officers and of all elaborate machinery for soliciting and advertising for business. With the interstate-commerce act still in force, the fair and reasonable rates could still be adjudicated and enforced, and on a lower level because of the economies mentioned. Compulsory combination, or unrestricted right of combination, would be far more in keeping with our American ideas than this new commandment, "Thou shalt not enlarge thy business."

No less violative of the American ideals is the proposal to regulate stock and bond issues. But I do not argue that here, in view of the other things that I wish to have time to say about that proposal.

Ever since railroads began they have been the creatures of the States where their lines lay. The only exceptions were the few lines chartered by Congress, where the lands to be traversed belonged to the Federal Government and were subject to state control only as to certain matters. The underlying idea was the same in both cases, viz, that the Government, be it State or Federal, having paramount jurisdiction of the lands to be crossed, should authorize and control the railroad. So the railroads have come forward through the years, amenable to the States for taxes, for rights to condemn necessary land, and for regulation of operating matters.

It is necessary here to mention the distinction, doubtless familiar to this committee, between regulation of railroads in their aspect of interstate carriers and regulation of their other functions. By Article I, section 8, of the Constitution, Congress has power to regulate commerce among the several States. But no pertinent power is conferred upon Congress as to any matters other than commerce. And the tenth amendment expressly reserves to the several States all powers not delegated to the National Government, while the fifth amendment decrees that no one shall be deprived of his property without due process of law.

The several States granted charters to the railroads. These charters are contracts, subject to amendment by the States, and only by the States. The result is the same as to railroads incorporated under general state incorporation acts; the railroad's powers are derived from and circumscribed by the act and can not be altered except by amending the act, which only the State can do.

Many, if not most, of the powers thus granted by the States have no relation whatever to interstate commerce. They are as readily applicable to a corporation running a crossroads blacksmith shop as to a railroad running through several States. They are the same whether the railroad runs 10 miles all within one State, or 10,000 miles in 20 States. They would fit equally well a corporation con-

ducting a hospital or a circulating library. Among such powers, granted or withheld by the several States according to their respective legislative policies, are the power to acquire extensions and the power to emit and negotiate stock and bonds. In the face of these well-known, firmly established facts, can it be that Congress intends to oust the several States from their exclusive control of these matters and announce a new universal policy in the making of which their legislatures shall have no voice? If so, can it further be possible that Congress means to do so by stretching the commerce clause to the breaking point? I can not believe it. It seems to me that we are contemplating a break, a revolutionary departure, as serious and as dangerous as if the proposal were to abolish state legislatures and govern the country exclusively from Washington. Certainly, as to the subjects proposed to be controlled, the result will be the same. You Congressmen are elected by the separate States, and I wonder if you can face your electorate and justify taking away from them so important a part of their sovereignty.

Another phase of the matter will permit brief mention. Congress has in mind the general welfare, not merely that of the shippers or of any special class. Therefore, consider for a moment the investor. He has bought his investment in reliance upon a state statute. Whether he owns stocks or bonds, he hopes for an added margin of safety through growth in mileage and tonnage. Likewise he looks to the State to protect him from misuse of the right to negotiate securities. The prudent banker or investor will not buy securities of corporations organized under the laws of certain of the States, because he deems those laws do not contain adequate checks upon fraud or reckless overissues. But he readily buys securities founded on the laws of other of the States, because he knows that sufficient safeguards are provided and that the courts of the State set a high standard for the acts of corporate officers. Yet this proposed legislation will destroy all the things on which investors have relied, and will substitute rules that they did not choose and probably would not choose if they could.

To speak of investors, moreover, illumines this subject from another angle. What has the Federal Government to do with the investor? Point out to me the constitutional provision that directs Congress to perform this beneficent function. If the avowed purpose of the law is to protect investors, then the statute will be unconstitutional from the outset.

Addressing myself now to the matter of the proposed restrictions upon the issuance of stocks and bonds, I should like to state, not only as my opinion but also as a proposition that can be established by sound logic, that the proposed restraints will not have the slightest effect in the direction of reducing rates. If they have any effect whatever it will be in the direction of raising rates, for reasons that I shall come to later.

Rates are made one by one; a single commodity is under consideration and the decision is then made as to the price to be charged for moving this commodity from A to B, A to C, B to C, A to D, B to D, C to D, etc. Under existing conditions scarcely a rate can be fixed by a traffic man save upon the basis of the competition of his neighbors.

I heard a traffic man say a few days ago that a railroad 400 miles long could fix the rates of every railroad in the United States up or down.

Mr. STAFFORD. Will you kindly explain how that is possible?

Mr. WALKER. It is possible in this way: If a railroad is connected at both ends with other railroads, it is bound to form a through rate from some distant point off of its line to another distant point off its line. If this intervening railroad decides its rates shall be different from what they have been, those different rates must figure in these longer rates. Those in turn affect the longer rates in the same commodities, and the thing extends across the entire country. Then the shippers interested in other commodities complain they are not getting as fair a deal as those in the first commodity, and that also spreads; and before we get through with it the changes made by that one small railroad have affected to a greater or less degree all the rate systems of the United States.

The traffic man and his neighbors in turn can afford to fix rates only upon such a basis as will render an adequate remuneration, taking into account such matters as weight, bulk, ease or difficulty of handling, the value of the commodity, amount of risk in handling the commodity, etc. A rate never is, and probably never was, fixed by taking into account the capitalization of the corporation fixing the rate. I greatly doubt whether the principal traffic man of any important railroad could correctly or even approximately state the securities that the railroad has outstanding or the amount of such securities. I can guarantee that none of them ever considers the securities when trying to determine a rate on a given commodity from one point to another.

Mr. TOWNSEND. Have you ever been interested in a case before the Interstate Commerce Commission?

Mr. WALKER. No; I have never appeared before the commission myself.

Mr. TOWNSEND. You know it is a very common practice, do you not, to insist that the rates will not enable them to yield a proper return upon the securities of railroad companies? That is a very common defense the railroad puts up.

Mr. WALKER. I was just going to mention that. There are some differentiations to be made there, I think, that explain that matter considerably.

Mr. KENNEDY. A railroad that has very large earnings would have more money for betterments and for the improvement of its system if it did not have to pay out so much in dividends. Do you not think that ultimately will affect rates?

Mr. WALKER. Yes, sir; it does, but usually to the disadvantage of the corporations upon whom this statute will fall most severely, namely, those corporations that from past history have inherited heavy capitalization.

Mr. KENNEDY. I can see that if a railroad should be built paralleling some of the overcapitalized roads, their dividends might be imperiled and they would have to reduce their rates by competition, would they not?

Mr. WALKER. Yes, sir.

Mr. KENNEDY. We ought not to allow the new road to overcapitalize just that the old road should continue to pay dividends.

Mr. WALKER. There is little danger of that. I doubt if an instance could be pointed out of a railroad the overcapitalization of which dated from the inception of that enterprise. The overcapitalization, when it occurs, ordinarily is after the property has become established and has a more or less intangible but perfectly real value known as earning power. A new railroad in a frontier country can not be said to have earning power until it has proven it.

Mr. TOWNSEND. Have you found anything in this bill which affects anything not already established?

Mr. WALKER. If I read the bill correctly, I think I have, Mr. Townsend. I would be glad, however, to have any misapprehension I may be under allayed on that score, and I would be greatly relieved also.

Mr. TOWNSEND. I wish you would point out where you think it would interfere with it if you find any such thing in the bill.

Mr. WALKER. As I understand the bill, it does not control the stock or bond issues of existing railroads. It makes provision for taking up existing stocks and bonds and reissuing them; and if you do issue stocks and bonds it will be for money to be used in railroad business and can not be issued for less than par except in the case of bonds. If you mean I think the act is to have a retroactive effect, I do not understand it that way at all. I do mean, however, that the sins of the fathers are visited upon the children very severely in railroads, and a railroad that comes into the hands of its owners with heavy capitalization, due to recklessness and foolhardiness in business, has to compete on equal terms with such a railroad as Mr. Kennedy speaks of which has low capitalization and earning power and ability to make betterments that will still more cheapen its efficiency.

But I believe that the claim is made that the rates are determined in the aggregate by the outstanding capitalization, and hence that restrictions upon the emission of securities are desirable in order to keep down the aggregate of capitalization, with the result that the rates as an aggregate will also be kept down. There are good reasons why this is not so. The misconception probably arose through the fact that on one or two occasions rates fixed by the Interstate Commerce Commission as reasonable have been successfully attacked by carriers on the ground that their rates as a whole (including the rate lowered by the commission's order) were not justly remunerative. To get at what was a proper remuneration, recourse has been had to the question of what was a proper rate of income upon the value of the investment represented by the railroad. In arriving at such rate of income consideration has been had of the outstanding stocks and bonds. At this point, however, it must be noted that stocks and bonds were considered in these cases as a quick and simple rule of thumb method of ascertaining what might or might not be quite a different thing, namely, the value of the railroad property. Both in theory and in practice, a fair rate of return upon actual value is just, both as to the carrier and as to the shipper, but such value practically never has any accurate relation to the aggregate outstanding amount of stocks and bonds. In my judgment the majority of the railroads in this country are actually worth more than the aggregate amount of their stocks and bonds outstanding, and I believe

that a jury of impartial experts would so conclude in the case of almost any railroad property. I believe that the value of the property with which I am most familiar is many million dollars in excess of the total outstanding amount of stocks and bonds. From this view point, therefore, the shipper is getting a much lower rate than he would be entitled to if the rates were fixed on the basis of a fair return upon the actual investment value.

Mr. TOWNSEND. Do you mean the par value of stocks and bonds outstanding or the actual market value?

Mr. WALKER. The par value. Unfortunately for the valuation argument, it rarely happens that a single railroad is the only railroad running between two given termini. Competition between competing carriers has its play, and the rate is fixed thereby and without any remotest relation to investment value of the several properties. The result of this method of fixed rates, as has been seen over and over again in American railroading, is that the weakest road succumbs, is reorganized, tries again and perhaps succeeds, but more likely again fails, and is finally acquired by some stronger connection.

I therefore repeat that the idea of reducing rates through restraining the issuance of securities is illusory and an ignis fatuus. I probably can not do better than to read at this point an editorial appearing in the "Railroad Gazette" of February 4, 1910, which, you will notice, is as severe upon the corporation lawyer who defended his corporation as it is upon the Interstate Commerce Commissioner who attacked it.

I wish to say also before reading this that the mention of the Interstate Commerce Commission here is not my view; it is the view of the editor.

At a recent dinner of the New York Economic Club, Commissioner Clements, of the Interstate Commerce Commission, attacked the excessive inflation of the securities of the Chicago and Alton, but he attacked it, as usual, on the wrong grounds, while Francis Lynde Stetson defended it on almost the only grounds upon which it was indefensible.

Referring to the refinancing of the Alton, after the change of management in 1899, and to the stock-exchange scandal when John W. Gates got control of the Louisville and Nashville and had it subsequently bought away from him at a large profit to himself, "in both these cases," said Mr. Clements, "the added amount in stocks and bonds was taken out of the pocket of the public in increased rates." We wonder if Commissioner Clements has ever chanced to observe that the Chicago and Alton, running from Chicago to St. Louis and Kansas City, is not the only railway serving these points. As a matter of fact, the territory between Chicago, St. Louis, and Kansas City is, perhaps, the most highly competitive territory in the country, and we beg to inquire what the Wabash, the Illinois Central, the Cleveland, Cincinnati, Chicago and St. Louis, the Chicago, Burlington and Quincy, the Chicago and Eastern Illinois, and the Pan Handle-Vandalia were doing while the Chicago and Alton was taking the amount of its increased capital out of the pocket of the public in increased rates between Chicago and St. Louis? It would be interesting also to know who chloroformed the Wabash, the Chicago, Rock Island and Pacific, the Chicago, Burlington and Quincy, the Atchison, Topeka and Santa Fe, the Chicago, Milwaukee and St. Paul, and the Chicago Great Western while "the added amount in stocks and bonds was taken out of the pocket of the public in increased rates" between Chicago and Kansas City?

Of course, the contention that an isolated road in a highly competitive group can raise its rates for any cause whatever, whether based on its own stern necessities or on the pleasure of the chase, and still do business, is arrant nonsense, and the man that made such a statement is conspicuously unfit to be a member of the Interstate Commerce Commission.

But when Mr. Stetson rose to reply he attempted to defend the Alton and the Louisville and Nashville financing on moral grounds, which was hopeless. Why there should be so much obscurity in people's minds over so plain a subject as this is beyond

us. In regions where there is either actual or potential railway competition overcapitalization can not affect the rates; it can seriously damage the minority stockholder, and therefore is wrong morally; it has a bad effect on the financial credit of the railway which is the victim of it, and therefore is bad railway practice. The public using the Chicago and Alton Railway has not been damaged to the extent of 1 cent by the overcapitalization of this property, but the wings of the Alton were clipped when the transaction took place, because it was thereby denied for a long period of time the privilege of obtaining new funds in the world's money market—except at prohibitive cost. Therefore, actual damage was done to the company's credit, but no harm was done, or could possibly have been done, to the traveler and the shipper.

We have discussed the case of the Alton rather than that of the Louisville and Nashville because the principles involved are more sharply pointed. In the Louisville and Nashville affair the overcapitalization was not serious—a fact conclusively demonstrated by the company's high financial credit at the present time. But the Louisville and Nashville could no more take the increased capitalization out of the public in the form of higher rates than the Alton could. The Louisville and Nashville is a less simple and compact property than the Alton; it has one kind of competition between Cincinnati and New Orleans and another kind between the Birmingham district and the Atlanta district, while between Louisville and Memphis or Nashville and Memphis it has still a different kind of competition. But in the whole Louisville and Nashville system there is not one single line which has not some effective competitor, unless we except two or three minute branch lines which are not important enough to attract competition. What would the Queen and Crescent, or the Illinois Central, or the St. Louis and San Francisco, or the Mobile and Ohio, have done if the Louisville and Nashville had attempted to increase its rates at the cost of the public? They would have taken all the company's business and left a very handsome railway entirely idle.

We take this opportunity again to thrash over familiar ground because we are determined to drive from Ireland the snake named "cost of service." Rates are not made in accordance with what the work costs the railway or what the railway would like to earn; they are made on a basis which will permit the traffic to compete effectively in the markets of the world. Oranges from California, Florida, and Jamaica compete in New York City, but they are sold on a quality basis, not on a distance basis; the buyer is not at all interested in protecting the railway companies from any loss they may have incurred in competing with a steamship company. If rates were made on the "cost of service" theory there could be no competition in the country at all, since the line with the lowest operating costs would get all the business, and the other lines serving the same points would get none whatever.

Mr. TOWNSEND. May I interrupt you there, Mr. Walker?

Mr. WALKER. I will be very glad to have you do so.

Mr. TOWNSEND. Your theory of the case is that overcapitalization results in injury to the railroad itself, or to the minority stockholders, I believe you said—or, rather, you agreed with the report in the paper that said so?

Mr. WALKER. Yes.

Mr. TOWNSEND. It has been frequently argued before us by railroad men that any burden that is put upon the railroad must ultimately come out of the consumer; that the man who purchases transportation for freight or passengers must pay eventually for these things and that we are not benefiting but are injuring the consumer. Does not the mismanagement of a railroad by overcapitalization and overbonding to the extent mentioned in this article react eventually upon the shipper?

Mr. WALKER. I think you need to distinguish between the burden that is put upon the carriers as a whole and the burden that is put upon a single carrier. This statute will act here and there upon a carrier, with the result that the weak ones will be unable to finance further and will go to the wall.

Mr. TOWNSEND. You have not discussed that part yet. We have not learned from you why it will put a burden on it. You have condemned the proposition, but you have not argued it.

Mr. WALKER. On the other proposition, you will have to discriminate between burdens universal and a burden single. I have in mind, for the purpose of illustration, the Chicago Peoria and St. Louis, which, through excessive capitalization, went into the hands of a receiver in July, and one of the first things it was enabled to do was to get an injunction against the enforcement of the 2-cent passenger fare law. So the result of the overcapitalization in that single case, for the time being, and as long as the road is in the receiver's hands, was an increase in the cost to the public of the service rendered.

Mr. ADAMSON. I hope you will explain how it is that these restrictions will operate most heavily on the new and weak enterprises.

Mr. WALKER. I would like to distinguish, first, between the "new" and the "weak."

Mr. ADAMSON. Well, the new ones are generally weak ones, are they not? They have not been able to establish themselves yet.

Mr. WALKER. But a new railroad may be moderately capitalized and have a sufficiently strong backing to get along all right under this law, while quite an old railroad—

Mr. ADAMSON. Sometimes it is very strong, and the world has not found it out yet.

Mr. WALKER (continuing). While the old railroad may have such a burden of debt incurred in the past that it is really weaker than the comparatively untried enterprise.

Mr. ADAMSON. Yet that is not always known.

Mr. WALKER. It is, however, more known since the accounting regulations provided by the Hepburn Act than ever before. My feeling is that publicity with regard to railroad affairs is so great that no investor who desires information should be excused for not knowing anything he wants to know about the inside of a railroad. I do not know of anything that can not be obtained readily from the Interstate Commerce Commission on request, because it is all in our published reports.

Mr. WASHBURN. If it does not interrupt you, I would like to inquire at this point if I am right in understanding you to say that the legislation suggested in section 12 is quite without precedent anywhere in this or any other country?

Mr. WALKER. No; what I meant to be understood as saying was that it is without precedent in the distribution of the powers that we have under our constitutional system in this country. Several of the States have taken it upon themselves to regulate stocks and bonds; but the General Government has not done so, and has no paternal power over the matter which would entitle it to do so.

Mr. WASHBURN. There has been legislation in many of the States that is quite as comprehensive as this, has there not?

Mr. WALKER. Oh, yes; you wanted me to say in what respect this legislation would operate detrimentally to the overcapitalized roads. I think it would work in this way—

Mr. TOWNSEND. First, tell me how it affects the overcapitalized roads. What provision of the bill affects overcapitalized roads?

Mr. WALKER. It has no retroactive effect, as I said before, as to an overcapitalized road. Any banker can tell you which are and which are not overcapitalized. It has not gotten par, and ordinarily it gets nowhere near par, for its bonds. I think you want to be understood as intending that this bill shall accomplish something if passed. Now,

if it is going to accomplish nothing but for the Interstate Commerce Commission to say that the market value is what a banker will offer for the bonds of a given company below par, why pass the bill? If the commission is only going to make the statement of what is an everyday occurrence with the ordinary banking concerns of the country, why pass the bill?

I take it that the commission will adopt standards of its own (and it will have to justify its work under this law), and instead of taking the banker's figures they will perhaps fix an arbitrary rate of commission that the banker may receive. It will adopt the rule that the previous month's market value, or the previous six months' market value is a fair test (which it frequently is not), or it will in some other way fix a price upon securities that are salable only below par, at such a figure that the railroad simply can not sell them, and must struggle along as best it can, turning its earnings over and over, running up its floating debt as long as the bankers will lend it any money to add to its floating debt, and finally succumbing.

I can not believe from my experience in other States that any value is to be added to the securities by the approval of the Interstate Commerce Commission. I doubt it any American banker would consider that an element of value.

Bankers in examining our securities to-day give our matters a more thorough examination, and they give both the present and the future at least as comprehensive a search as the Interstate Commerce Commission could do. That is my explanation of the damage to be done to overcapitalized roads.

Mr. TOWNSEND. Conceding, for the sake of the argument, that the Interstate Commerce Commission would have constitutional authority to do this if it were vested in it by the Congress, do you believe there should be no regulation at all upon the issuing of stocks and bonds?

Mr. WALKER. We have regulations in all the States as far as stocks are concerned. Bonds are in an entirely different category. If you were running a country bank you would not welcome any statute that told you at what rate you must accept everybody's note. If you were running a country bank you would lend to some, you would insist that others put up collateral in addition to their signatures, and you would absolutely refuse to lend to others. That is just the way the banker looks at it. The railroad's note is good, bad, indifferent, or worthless, as the case may be.

Mr. KENNEDY. Every railroad corporation is in a sense a part of this Government, administering a public highway. Do you not think there ought to be some restriction upon their capitalizing themselves to build upon a speculative basis a new road that there is no business necessity for now?

Mr. WALKER. I should have answered Mr. Townsend's question further. What I have in mind is this: You are approaching this subject apparently from the point of view of the investor. The Republican platform spoke only of interstate carriers, but that, I suppose, was because it was not considered at the time of the drafting of the platform that anything but interstate carriers could be controlled by such a law as this. It seems to me, however, that if you are going to safeguard investors in that way, to make sure that dollar for dollar is behind every investment, it is most unjust to begin on the railroads, which are already the most watched and searched

and overseen members of our community, and leave untouched mines, patents, chemical processes, manufacturing enterprises, and all the other things in which investors are defrauded ten dollars for one every day as compared with railroad securities. I can not see that the reason for controlling railroad securities is of such a great and important nature as to justify this legislation. It is my firm belief that a case like that of the Alton, for example, can not occur again. No banker would lend himself to it, knowing that the accounts of the railroads are now so scrutinized by the Interstate Commerce Commission.

Mr. WASHBURN. You spoke of this legislation as being an infringement of the rights of the States. Is it your opinion that where in any of the States there is legislation touching the issue of new securities which is more drastic than this, that this proposed federal legislation would in any way affect that state legislation?

Mr. WALKER. Does it not seem to you that this law must be sustained, if at all, under the commerce clause? If under the commerce clause, then it falls within those federal decisions that matters of regulation under the clauses of the Constitution are left to the several States until Congress has acted, and when Congress acts it takes exclusive control of the field. I believe I state it correctly.

Mr. RICHARDSON. And then the state law is superseded.

Mr. WALKER. Yes; and it becomes entirely obsolete.

Mr. WASHBURN. I am not quite through with this line of inquiry. The laws of the State of Connecticut are somewhat more liberal than the laws of the State of Massachusetts on the matter of the issuance of securities of railroad corporations. For instance, the New York, New Haven and Hartford Railroad is chartered, as you know, under the laws of Massachusetts and Connecticut. Recently in Massachusetts the New York, New Haven and Hartford very largely increased its capital stock, as it had a right to do under the laws of Connecticut, and issued a lot of new stock; and it also acquired stock in the Boston and Maine road; and both of those transactions were held to be in contravention of the law of Massachusetts. The attorney-general of Massachusetts gave it as his opinion that the charter could be forfeited, and the New York, New Haven and Hartford road was compelled to part with its holdings of the Boston and Maine stock. Now, the question as to the forfeiture of the charter was referred to a committee consisting, as I now recollect it, of the commissioner of corporations in Massachusetts, the savings bank commissioner, and the railroad commission; and referring directly to this proposed legislation that committee made the following report:

This suggested possible solution of the questions before us naturally leads us to federal control. The national administration has already indicated its policies, and it remains only for the Congress to take legislative action. The President of the United States has declared in favor of such national legislation and supervision as will prevent the further overissue of stocks and bonds by interstate carriers, and recommends the enactment of federal legislation to secure such result. He states in detail in his message his views with respect to the rule of corporate conduct attaching to such issues. If the suggestions of the President should receive the approval of the Congress, it will be found that the additional federal supervision of interstate carriers will, in part at least, solve some of the questions now presented to this board.

Conveying, by implication at least, a certain measure of approval of the federal supervision that should remove from the domain of discussion such differences as arose out of the fact that the laws of Con-

necticut were very much less strict than the laws of Massachusetts on this question of the issue of securities by railroads.

Now, do you not think that federal legislation would at least put at rest those conflicting questions as between adjoining jurisdictions, as between one State and another, and to that extent be a distinct advance?

Mr. WALKER. At the outset, until the federal statute had been adjudicated as valid, it would simply create conflict, I would say.

Mr. ADAMSON. It would only tend to arouse conflict until the Supreme Court knocked the federal statute in the head.

Mr. WASHBURN. I, of course, did not predicate my question on the basis of an unconstitutional act. I was assuming that the act would be sustained.

Mr. ADAMSON. When you wipe Massachusetts and Connecticut both off the map of the States, that kind of legislation can be sustained in this country.

Mr. WASHBURN. Then this country will cease to exist.

Mr. ADAMSON. That is true. When one State dies all States will die and the Republic will die. If centralists realize that they assail their own State when they assail other States centralization would go out of fashion in this country.

Mr. RICHARDSON. Do you believe that section 12, that you have been discussing, of this bill, if enacted into law, would prohibit a railroad company from buying the stock of a railroad or purchasing the railroad itself, where it is not in competition with that road at all?

Mr. WALKER. I am saying that that is a possible interpretation and one I should not be willing to decide at this time the other way. I believe that that prohibits any acquisition.

Mr. RICHARDSON. You believe that this law would prohibit a common carrier on the eastern part of the country from buying a common carrier on the western part, with which it has no connection and could not have?

Mr. WALKER. I should go as far as that. They do have competition.

Mr. RICHARDSON. You think that all of the roads in the country are in competition with each other?

Mr. WALKER. Every road in this country is in competition with every other road, as far as the business covered by this act is concerned. You see, the language is "Respecting business to which said act to regulate commerce, as amended, applies."

I doubt if you can pick out a single instance where a railroad, even in eastern Georgia, we will say, does not compete in some way with a railroad in western California.

Mr. RICHARDSON. But in construing this act a court would evidently take into consideration the intent and purpose of it. What is that? It is to prevent any railroad from interfering with lawful competition.

Mr. WALKER. We had similar hopes as to the language of the Sherman Act, which were very much blasted.

Mr. WASHBURN. Can you tell me, from knowledge or from recollection, in how many States of the Union the railroads are prohibited from holding stock in other corporations?

Mr. WALKER. No. I know something of the Rock Island States, as we call them. They are comparatively few. I think the regulations of Illinois are rather——

Mr. WASHBURN. In Massachusetts no railroad corporation can hold stock in any other corporation, except in some specified cases.

Mr. RICHARDSON. I would like to ask you a question with regard to the matter of interfering with the States, about which you expressed an opinion. Do you believe, where a railroad had originated and been chartered, say in the State of Massachusetts, and certain statutes had been enacted allowing it to issue stock and bonds, and it was confined entirely to that State, that this act would interfere with anything of that kind? I want to get your idea about State rights now.

Mr. WALKER. It is for any purpose connected with or related to any part of this business covered by the act to regulate commerce as amended. If an old narrow-gauge railroad entirely within the State of Colorado is amenable to the provisions of the Hepburn Act, I do not know why any difference should be made.

Mr. ADAMSON. If the capitalization, or the bonded indebtedness, or the earnings, or any one of the three, is material information upon which to determine proper rates, is it not possible to obtain the information from the company, and for the Government to secure that entire information without attempting to usurp the power of control and restrictions on the details of these corporations?

Mr. WALKER. I thoroughly believe that that would be entirely practicable and desirable.

The CHAIRMAN. Give me your opinion on this: The Pennsylvania Railroad has lines east of Pittsburg and lines west of Pittsburg. They are in competition with the New York Central line. If there were two separate companies owning those lines east and west of Pittsburg, and both lines were used as a through route in competition with the New York Central, would the eastern line be prohibited from acquiring the western line under any of these provisions?

Mr. WALKER. I think that is within the meaning of the section as it stands in the Townsend bill.

The CHAIRMAN. What part of the Townsend bill would prohibit that?

Mr. WALKER. The language I read before:

Any railroad corporation which competes with such first-named corporation respecting business to which said act to regulate commerce as amended applies.

The CHAIRMAN. The line west of Pittsburg is certainly not in competition with the line east of Pittsburg.

Mr. WALKER. I do not see why not.

The CHAIRMAN. If it constitutes a through route, how is it in competition? How is one of those lines in competition with the other?

Mr. WALKER. A single line can be, within the meaning of that language, I believe, in competition with itself. The Pan Handle, we will say, running west of Pittsburg, is in competition with its route in connection with the Pennsylvania as against its route with the Baltimore and Ohio.

The CHAIRMAN. That might all be, but then this is a railroad. Whether it is in competition with itself does not make any difference. It would not be competition with itself. Here is a line east of Pittsburg that has a through route over a line west of Pittsburg. In what respect is the line west of Pittsburg in competition with the line east of Pittsburg so that under the provisions of this bill the line

east of Pittsburg would be prohibited from acquiring the line west of Pittsburg?

Mr. WALKER. In the respect that either of them forms a through route with some other line.

The CHAIRMAN. That is another question. You are assuming that they do.

Mr. WALKER. Assuming that they do or do not?

The CHAIRMAN. You are assuming that they do.

Mr. WALKER. You mean if there is only one line?

The CHAIRMAN. I am assuming that there is a through route over the two lines.

Mr. WALKER. And that there are no other through routes formed in combination with either? Is that a part of your assumption also?

The CHAIRMAN. I suppose that would be so, as to particular places, yes.

Mr. WALKER. And no possibility of divergence at the eastern extremity of one, and at the western extremity of the other. You see all that has to be considered. If we had a line running through an absolutely unsettled country east, and another line running through an absolutely unsettled country west, not crossing or intersecting any other railroads, then I think perhaps neither could be said to be in competition with the other. But the trouble is that each of those roads has business to deliver to a number of other roads at various points on the line, and as to that business they get in competition with each other.

Mr. RICHARDSON. Mr. Walker, I am very much interested along the line of hearing your full views on the question of the right of a State, and the right of the Federal Government, or Congress, on this subject. A great many of the States, as you know, grant railroad charters. All of them grant them more or less. The Government does not grant any at all now. The States all grant their railroad charters, and then frequently, subsequent to the granting of the charter, they pass a state statute allowing the consolidation or reorganization of a railroad. Now, suppose this bill here were to become a law, and the reorganization and consolidation were to take place after this became a law. What effect would it have?

Mr. WALKER. My belief is that unless the promoters of the enterprise could satisfy the people investing in the securities—the bankers, or whoever they might be—that the securities were safe, and complied with all the requirements, both of the Federal Government and of the state government, those securities would have no market.

Mr. RICHARDSON. It would destroy them?

Mr. WALKER. Yes.

Mr. RICHARDSON. Well, now, you have correctly stated that a charter of that kind, granted by a State, could not, of course, be amended by the Federal Government—by Congress. In what way could Congress get charge of that charter, it being an interstate railroad and running from one State to another? Could it get charge of it by authorizing the corporation voluntarily to come in and take out a national charter? Would not that give the Federal Government control and charge of it regardless of the state law as to consolidation and reorganization?

Mr. WALKER. Well, that opens a large question. It is almost impossible to foresee what the effect of a federal license would be. For

example, I, as a railroad lawyer, would wonder very much what I could do in the way of condemnation with a federal license. The United States Government condemns property for arsenals, public hospitals, and federal jails, which are most distinctly functions of the Federal Government. Whether it could so far claim that an interstate railroad was a federal function as to permit additional condemnation there I think is a very grave question. The whole point about the securities is that the bankers and the investing public are so used to elaborate safeguards, so careful about getting safeguards, that to pass a law which casts the slightest doubt upon the validity of any issue, or even throws difficulties in the way of getting out an issue, is to work a great hardship, and to make those securities exceedingly difficult of sale. I have in mind an instance where it was intended that one railroad should guarantee the bonds of another railroad. The guaranteeing railroad had the right to own the bonds of the other, and to guarantee them if the other were a connecting extension. It had running rights under an indefinite trackage contract over a stretch of line 21 miles long connecting several thousand miles of one railroad with several hundred miles of the other. Counsel for the bankers deemed that to cast such a grave doubt on the validity of the guaranty that the bankers were recommended not to buy the bonds thus guaranteed, and they did not buy them.

The slightest question of this kind is fraught with so many difficulties that they can hardly be foreseen. Furthermore, they get nowhere in the direction of more adequately serving the public or of lowering the rates.

There is another thing in that connection that I should like to refer to. We are putting this additional work upon the Interstate Commerce Commission. The market reports of New York City alone contain daily mention of one, two, three, and sometimes eight or ten, sales of blocks of railroad bonds to this banker or that banker. The commission is already more than swamped by the amount of work that is before it. The approving of these issues of securities would be deemed of such importance to the proprietors of the railroads and to the bankers that they would employ the best counsel and make the most thorough kind of a fight before the commission. That would mean a great waste of time. It would mean that the commission would be practically never out of session on railroad stock and bond applications, to the great detriment of the shippers who are waiting in court to get their rate cases heard.

MR. TOWNSEND. The bankers are greatly interested in this proposition, are they? Or they should be?

MR. WALKER. I should think they should be. Their seeming acquiescence is either due to their not having heard of it, or to not having philosophized upon it sufficiently.

MR. CALDER. Are you familiar with the issuance of the bonds of the New York City surface railroads some years ago?

MR. WALKER. Yes.

MR. CALDER. Do you not think if the railroad commission at that period had been clothed with the same power as is our public-service commission that those roads would not have been overcapitalized as they were at that time?

MR. WALKER. Yes. Of course there was a case where a local State public-service commission would have had complete control

of the entire subject-matter, and the prevention of those evils would have been a great public benefit. It does not affect the rate—it remains at five cents—except that we lost our transfers.

Mr. TOWNSEND. You approve of this regulation by the States, do you?

Mr. WALKER. I accept it when it comes. We do what we can to live under it.

Mr. TOWNSEND. But it reaches a real evil, does it not?

Mr. WALKER. It reaches what probably has been a real evil. I doubt if the future is going to see another instance of that kind. Most of the States require us to sell stock at par anyhow. There is nothing novel in that provision. It is the bonds that I am talking about mainly. They are just as much to be sold at a price as eggs or butter or any other commodity.

Mr. TOWNSEND. Do you know of any case where state regulations with reference to the issuance of stocks and bonds have embarrassed any legitimate railroad enterprise?

Mr. WALKER. That is a very hard question. The State of which I hear the most is Texas. Mr. Russell does not seem to be here. [Laughter.]

Mr. TOWNSEND. He may want to revise the record when you get through with it.

Mr. WALKER. I wanted him to check me in case I made any misstatement. Texas's stock and bond law is a very wooden affair. It gives us no latitude, and it practically prevents any construction in Texas by any railroad not operated there and that has not connections and resources back of it. It seems to put an absolute stop upon individual initiative in that State. That is the apparent outworking of it.

Mr. RICHARDSON. That kind of legislation obstructs public enterprise.

Mr. WALKER. Yes. We can legislate all the honest dollars we want to, but we can not prevent people from being spendthrifts or from being reckless, and we can not pass such a law as that all investors will be wise.

Mr. TOWNSEND. I may have misunderstood you, but I understood you to say that this would not affect new enterprises.

Mr. WALKER. No. I said that I differentiated between new enterprises and established ones overcapitalized. I think, on the contrary, it will raise some pretty serious questions as to the new enterprises. It would be my suggestion that some provision be added to the bill providing that it should have no effect upon a railroad until that railroad was at least, say, five or ten years old, because a railroad is such an absolutely untried experiment that you do not know whether it is going to succeed or whether it can haul profitably or not; and you just make your gamble.

The CHAIRMAN. Entirely new railroads are usually, are they not, wholly within the limits of a State?

Mr. WALKER. Yes; but still they are engaged in the business covered by this act.

The CHAIRMAN. Not until they are organized, and have tracks constructed, and have issued stocks and bonds.

Mr. WALKER. Do you mean if I choose to organize, in any State, my railroad with a capital of one hundred thousand or a million

dollars, with the rails laid flat on the prairie without any particular expense, that this act will have no effect on it until the railroad is built? I should be very glad to have the act mean that.

The CHAIRMAN. I do not see how it can. I am seeking information. I wish it could, and I hope it can, but I do not see how the act can have any control over a railroad that is wholly within a State before it carries any commodity across the state line, or does any interstate business.

Mr. WALKER. It seems to me that the issuance of stock, even in the first instance, is an issuance for a purpose connected with or relating to a part of the business covered by this act. Certainly, as a railroad lawyer, I should not advise a company of promoters or adventurers to engage in any such enterprise without first getting the requisite approval under this act.

The CHAIRMAN. Suppose they did. The Interstate Commerce Commission, of course, could not help them, and nobody could prosecute them for it. When the railroad is constructed would anybody have the power to prevent them from carrying on an interstate business?

Mr. WALKER. No; but how about afterwards when they should want to make extensions? Then they would reap the consequences of their folly very promptly.

Mr. STEVENS. The Interstate Commerce Commission could compel them to make through rates and through routes if they had a connection so that they could?

Mr. WALKER. Yes.

Mr. KENNEDY. Before they could appropriate property in any State they would have to set forth the purposes for which they were organized?

Mr. WALKER. Yes.

Mr. KENNEDY. They could only take their real estate upon the theory that they were going to be at least a common carrier?

Mr. WALKER. Yes.

Mr. STEVENS. The very power to be made an interstate route would be sufficient to make them come within this act, would it not?

Mr. WALKER. I believe so. At any rate, it is only putting off the evil day at best. Even if they could do it in the first instance, at the first subsequent issuance of securities they would be in trouble.

Mr. KENNEDY. Railroadng is thoroughly understood as a business proposition now everywhere. The prospects of the territory that you look at are not entirely a gamble. There is something certain about what is going to happen in the growth of the country. Do you think that railroads ought to be built upon a purely speculative basis, where the stock sells for 5 or 10 cents——

Mr. WALKER. No.

Mr. KENNEDY. Or a dollar?

Mr. WALKER. I do not think that.

Mr. KENNEDY. Suppose the Interstate Commerce Commission were given discretion about the bonds. I think that in building railroads a limit ought to be put in some way upon these gambling ventures in the way of promoting new railroads. They ought not to be built indiscriminately, but they only ought to go where there is an excuse for their going as a business proposition.

Mr. WALKER. Yes. The point I have in mind is this. A new enterprise of that kind can not be so carefully and correctly computed as to fix any particular amount of securities as the proper amount, and I do not believe the Interstate Commerce Commission is going to have any better means of judging than the adventurers themselves. Hence I say there is no justification for putting the commission at work on any such task. They would have to act conservatively, and the result would probably be just what we get in Texas. Mr. Roosevelt said a number of times that he believed the original exploiters of an enterprise, by reason of the risk they took, should have the opportunity of reaping a greater profit. It seems to me that that is a fair principle to be applied to all kinds of business in this country, and that it ought to be applied to the railroad business.

Mr. TOWNSEND. Have you read the last part of section 12 in reference to the determination by the court as to whether the acquisition of stock in a competing road or the acquisition of the road itself is a violation of the law?

Mr. WALKER. Yes.

Mr. TOWNSEND. Does not that cure some of the evils, or some of the imaginary evils, which you have seen?

Mr. WALKER. I should not think so. You can not expect a more favorable opinion, I should say, from a court than from a commission. Why should you?

Mr. TOWNSEND. That was intended to furnish some elasticity, at least, to the question as to what is a competing road. You have drawn it to the limit. You have said that all roads are competing, practically, and would be brought within the rule. Evidently the object in framing this proposed law was to prevent the acquisition of roads which do in fact compete, can be seen to compete, and thus to prevent monopoly as far as may be. This provision gives the court the authority to determine, and it may take into consideration in determining that question the relative importance of any benefit to the public interests by such acquisition. It seems to me it would shut out these very extreme cases which you have named.

Mr. WALKER. About the only justification for such an interpretation, from a purely technical, legal point of view, it seems to me, is the fact that this statute is made as part of an amendment to a rate law. The statute on its face does not show that it has any such idea in mind. If we should refer to the Republican platform in arriving at a decision in a case arising under this act that also does not show that it has anything to do with rates. It looks more like investors there.

Mr. RICHARDSON. I want to ask you a question on a subject that you discussed some few minutes since. I understood you to say, Mr. Walker, that overcapitalization had no effect on or relation to the fixing of rates; and you also said, as I understood, that it was unreasonable and not to be expected that there would be a physical valuation of the railroad—that that would not have anything to do with the rate—what the railroad was, the actual railroad.

Mr. WALKER. I said it does not. It should have.

Mr. RICHARDSON. Then, what does affect the rate? What is it that brings about the rate, if it is not the overcapitalization and it is not

the size and is not the physical value of the road? What is it that governs the railroad in fixing the rate?

Mr. WALKER. Competition.

Mr. RICHARDSON. Altogether and absolutely?

Mr. WALKER. In all but very few instances, with a railroad exclusively owning its own railroad.

Mr. RICHARDSON. I had an idea, along with people generally, as I thought, that you had to fix your rate in such a manner, according to the amount of stock you had and according to the amount of bonds you had issued, as to give the holders of that stock and those bonds a dividend.

Mr. WALKER. No; it is separate from the matter of the investment in the securities.

Mr. RICHARDSON. Then the railroad is not in competition at all. It charges what it pleases.

Mr. WALKER. Yes; but there are very few of them.

Mr. RICHARDSON. When they get into these great consolidations then they lessen the competition, and that authorizes them to charge higher rates, according to that reasoning.

Mr. WALKER. Well, there are very few combinations that have yet gone to such an extent that they minimize competition.

Mr. RICHARDSON. Is it not a fact that large railroad systems divide out sections of the country, where no other railroad will come in because it is a violation of courtesy, etc.?

Mr. WALKER. No.

Mr. RICHARDSON. That is not done?

Mr. WALKER. No, sir; it is a free-for-all race.

Mr. RICHARDSON. That has passed away?

Mr. WALKER. Yes, sir.

The CHAIRMAN. The competition that you refer to is not merely between railroads; it is also between commodities and manufacturers and shippers?

Mr. WALKER. Commodities in the world's markets and the world's sources of supply. All those things enter into it.

I have nothing further to say except that I will sum up by saying that the matter has this look to me. As between shippers and carriers the carrier is the great conserving force. It furnishes the distribution in the economic play of the country's activities. The carrier is the one thing that stands between the smallest kind of a small dealer and the largest kind of a monopoly or trust. Hence anything that can be done in the way of making rates fair to the shippers and to the carriers should be done, and it should be done by the Federal Government.

Turning, however, to stocks and bonds, those are things for sale. They are commodities, and the Federal Government has no more business to fix a method of determining the rate at which those things should be sold than it has to fix the price, locally, of oats, or corn, or hides, or the product of the mines, or any other product that you can think of. For these reasons I believe the Federal Government should continue as forcibly as it pleases to carry out rate-regulating features, and should abandon this suggested attempt to fix the price at which stocks and bonds, and especially bonds, should be sold.

I might also say that I have read the hearings in which Mr. James Burns participated the other day. I am not altogether in sympathy with what seems to be the object of those amendments. I believe that the shorter and more inclusive you can make the power of the Interstate Commerce Commission the better. I would rather give them a wide discretion over any sort of railroad financing that might come before them than to try to enact an inclusive text-book on every kind of railroad financing and refinancing that could be suggested. I could suggest a number of others not mentioned by Mr. Burns.

Finally, I believe that the regulation of stocks and bonds will result in the increase of rates. Whatever is done in the way of hampering railroads in their financing (which already is beset with many difficulties) will tend to force the weaker railroads to the wall, and to bring about the acquisition of such lines by their connections. (I am assuming that the provisions against such acquisition will be interpreted in such a way as to permit the acquisition of nonparallel extensions.) This process, if carried to its logical limits, would shortly result in the centralization of all of the railroads of the country in a very few hands, with the result that competition will be lulled to a minimum in many districts. If competition is removed, it can hardly be expected that the railroad managers, in their desire to upbuild and maintain their properties and to show good returns upon the funds invested in them, will raise rates when opportunities occur.

I believe it was Representative Adamson who pointed out a few days ago that the only basis on which the committee can report the stock-acquisition feature and the stock and bond feature of this bill is that these regulations will relate directly to interstate commerce. It is my hope and expectation that your committee will conclude that there is no relation between the interstate commerce functions of a carrier, on the one hand, and its chartered rights on the other hand, and will refuse to report these features of the bill.

STATEMENT OF MR. E. B. PIERCE—Continued.

Mr. WASHBURN. If this is an opportune time, I would like to ask one question before the witness starts.

The CHAIRMAN. Very well.

Mr. WASHBURN. We were discussing section 7, and Mr. Pierce suggested that everything after the word "unlawful" line 2, page 13 should be stricken out. I would now like to inquire in what way you think, if the balance of the section were stricken out, the Interstate Commerce Commission would get the requisite knowledge of the rates agreed upon by these common carriers as suggested in the part of the section that would be left untouched.

Mr. PIERCE. I think they get it under the provisions of section 6 of the act as it now stands, with reference to the publication of the tariffs. You understand, of course, that before these agreements as to the fixing of rates can become effective, the rates fixed and the fares fixed must be embodied in tariffs and filed with the commission thirty days before they become effective. The commission and the public will get seasonable notice of all of these rates and fares under section 6, which provides:

The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain

the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this act.

All those things must be contained in the printed tariffs, which are required to be posted and filed in accordance with this act as modified by the rules of the Interstate Commerce Commission.

It would be absolutely and utterly impossible to give to the commission or to the public any more information by filing these agreements than they can get from the tariffs which must be filed in conformity with the section which I have just read. Is that all on that point?

Mr. WASHBURN. Yes; with a single added question. I understood you to be of the opinion this morning that the conditions imposed upon the carriers in section 7 would be such as would make it almost impossible to comply with it.

Mr. PIERCE. Yes, sir; that is my personal opinion, that it would be almost impossible to comply with it. If it were possible to comply with it, it would involve such very enormous expenditures as compared to any possible benefit that might be derived from it that it would be imposing a burden that ought not to be imposed. I can not undertake to estimate it, but the cost of preparation of all the agreements that would be required under this section, in my opinion, would run into millions of dollars a year.

Mr. WASHBURN. You mean for all the railroads of the country?

Mr. PIERCE. For all the railroads of the country. I am speaking of the railroad situation as a whole. Including the stenographers, the traffic men, the lawyers, and stationery, and all the machinery necessary to put these traffic agreements in any intelligent shape, it is not a wild guess to say that it would cost \$4,000,000 or \$5,000,000 a year to file those agreements alone.

Mr. RICHARDSON. In addition to that, if copies of the agreements were filed according to that provision, you contend that the public would not get any more benefit from it than they derive now under section 6 of the act?

Mr. PIERCE. I say that they get the same benefits under section 6 of the act.

Mr. WASHBURN. That is, the same information?

Mr. PIERCE. The same information and the same benefit, too. What is the use of imposing on us all this additional labor when we are already overworked and overburdened by matters of this kind, and when the public is getting just the same thing in another form?

Mr. TOWNSEND. Do you not think you are greatly magnifying that? You are talking about all the possible things that can grow out of the agreement that you may have to put in form. Whereas, as a matter of fact, you get together and you discuss matters and each one goes away satisfied with the agreement—you know what it is. Do you not think that what you have agreed upon could be stated very concisely and very briefly?

Mr. PIERCE. Assuming all that to be true, assuming that you can get up brief contracts, I say that the number of them would be so great and the labor involved in preparing these brief contracts and the expense would be so great that neither the public nor the railroads would get from it anything like the benefit that should be obtained when you consider the expense that would result from undertaking to do it.

Mr. TOWNSEND. Do you make any record of the agreements now?

Mr. PIERCE. Only in the form of the tariffs as they are issued. I have no doubt that the western trunk-line committee have been at meetings where there has been some sort of a memorandum record of what was done. Occasionally, I know—last year or the year before last—the Interstate Commerce Commission called on all these trunk-line committees to file their records showing the results of these meetings, and that was probably done. It might be done in that way, in a very simplified form. But those minutes are very brief, and you would not get any information from them that would really do you any good. The only information as to the result of these meetings that would be of any benefit, as showing exactly what was done, would be that elaborate information that is worked out in the form of the tariffs, and this would not amount to anything more than refileing what is contained in the tariffs.

Mr. WASHBURN. It would be a duplication?

Mr. PIERCE. It would be practically a duplication. I think it would be a duplication. I am not arguing against it, if there is any benefit to be derived from it; but just as I said to the committee before, from a practical knowledge of the situation I know that the machinery for complying with all the rules and regulations we have is getting to be so extremely complicated and so extremely burdensome that it is almost a physical impossibility to comply with it; and neither Congress nor the legislatures should impose any more of this burden than is absolutely necessary. I think this is one of the things that would be absolutely unnecessary.

Mr. WASHBURN. I would like to ask you just one more question, and then I am done—

Mr. PIERCE. Let me answer Mr. Townsend a little bit further. I want to say, Mr. Townsend, that I may be stating the case a little bit strongly. I can not tell you in dollars and cents. I mentioned the figure just now as \$4,000,000 or \$5,000,000. That may be gross extravagance. I am merely giving my own impression.

Mr. TOWNSEND. Well, it occurred to me that this did not have to be filed until you proposed to put it into vogue, which would be at the time you made your change in the schedule. That you were going to do anyway; and if that is all there is to it, it occurred to me that there certainly could not be this great expense.

Mr. PIERCE. You would not want anything filed that would not give some information, would you?

Mr. TOWNSEND. No.

Mr. PIERCE. It would be useless to file a meaningless paper, would it not?

Mr. TOWNSEND. Yes; I do not know that there is anything improper about the agreements, or about the meetings that you hold. I notice that the shippers and others who have testified seem to think that there is something going on there that the public ought to know,

and some of them go so far as to think that that ought to be published before it is even considered as an agreement, and that the commission should consider in advance whether that agreement could be tolerated or not. I do not know. Of course this is a perfectly harmless thing that you have stated here. There is nothing wrong about that. You simply get together in a meeting and agree that this will be the schedule, this will be the classification, and so on; which would simply amount to a conclusion as to what the schedule is to be for the future that you are going to propose, and you give thirty days' notice of it.

Mr. PIERCE. Let us assume that this agreement is of the most injurious character and that it involves all kinds of moral turpitude in the way it is done and that it has not any good purpose. There is not any way now to stop the going into effect of rates made in that way, except by an order of the commission made after a hearing on the rates, is there?

Mr. TOWNSEND. No.

Mr. PIERCE. So that, conceding what you say in that respect, there is not any machinery now in force, and this bill does not provide any machinery, that arrests the effect of those agreements any sooner than they can be arrested under the provisions of the act which gives the commission power, upon its own initiative or on complaint, to suspend the taking effect of any rate that is filed. It is not how a rate is made that the shippers complain of, but what is the effect of that rate upon that business. Is it an unusually high rate, or does that rate discriminate? That is what they are looking after, and that is all they care about. If a rate is filed, and it is shown that it is an unreasonable rate or that it is an unduly discriminating rate, it does not make any difference how it was arrived at, whether honestly or dishonestly; and the commission under this bill, and even under the old law, can set it aside at a very early date.

Mr. TOWNSEND. This bill proposes to give the commission the right to act on its own initiative in this matter, and it can take into consideration all the elements which enter into that agreement.

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. And can terminate it at once, so far as that is concerned.

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. The agreement might have a great bearing upon the commission in determining the reasonableness of a rate or regulation.

Mr. PIERCE. If the commission hold up a rate, it is very easy, when they have an investigation, to find out how the rate is made. They do it.

Mr. TOWNSEND. Do you not think it would be of great advantage in that case to know what kind of an agreement was entered into to bring it about?

Mr. PIERCE. Yes, sir; the commission can have it, and they do have it. At every important rate hearing in three years that I have attended some traffic man has been put on the stand and grilled and grilled and grilled as to how the rate was made, and whether they did not get together around a table in the twentieth story of some building in Chicago, behind steel doors and locked doors, so that nobody could get in. All those things have been gone into; and while the

commission say that the mere fact that a rate has been made by agreement does not make it unlawful, because, notwithstanding it was made by agreement, still it is a reasonable rate and therefore proper for the shipper to pay, yet they will look into it, and see just what was done at the making of the rate. They still have that opportunity at these hearings, and it is only at the hearings that this information could be utilized.

Mr. RICHARDSON. They enter into these agreements with the full understanding that the Interstate Commerce Commission has full power to review the whole thing.

Mr. PIERCE. Certainly; they always have and they do now. They can not help it. There are no secrets in railroading any more. They do not go to lawyers and say, "Is it proper to furnish this to the commission?" or, "Should not we furnish it?" Our doors are thrown wide open. An examiner of the Interstate Commerce Commission called at my office the other day and asked to see my files, I being the attorney of the company, and he wanted to know what I advised about it. I did think it was rather going too far, but at the same time I threw it open and said: "There it is. Take it and get what you can out of it."

We do not do anything that we do not expect at any time to have subjected to the closest scrutiny by the Interstate Commerce Commission.

Mr. KENNEDY. After one of your meetings to fix rates, and after the making of these agreements, would it not be possible in a general way, in a very brief statement, to say what that agreement was, without all this detail and all these matters that you have talked about?

Mr. PIERCE. Well, some of these tariffs are as large as this [indicating].

Mr. KENNEDY. Yes; but you agree to raise the rate, or to fix a 15-cent rate from Pittsburg to Chicago.

Mr. PIERCE. Yes, sir.

Mr. KENNEDY. Of course that necessitates thousands of changes.

Mr. PIERCE. Yes, sir.

Mr. KENNEDY. But in your meeting you simply agree to fix that rate through that territory.

Mr. PIERCE. Yes, sir.

Mr. KENNEDY. That simple statement would be a statement of your agreement without going into—

Mr. PIERCE. If you merely mean for us to make a statement, for instance, that the railroad companies had gotten together and agreed on the rates from Chicago, say, to California, and you just want a statement filed containing that and nothing more, that is a very simple statement; but since it is made lawful by this act to make agreements, what good could that simple statement do, unless it gave the information as to what the rates were, and the rules and regulations under which those rates could be operative?

Mr. KENNEDY. I think that perhaps so far as the statement of your agreement is concerned, nothing more was contemplated in this law than to give the Interstate Commerce Commission notice of what railroads have entered into it.

Mr. PIERCE. That is a very different proposition. If you merely want a statement filed with the commission that on a certain date the

railroads got together and discussed and fixed the hog and cattle rates from Iowa to Chicago, and nothing but that, anybody can file a statement of that kind; but I do not understand that you want a statement of that kind. I understand that you want the agreement filed.

Mr. TOWNSEND. Surely.

Mr. PIERCE. And that agreement must set out what the rates are, and all the terms and conditions under which those rates can be used. To require such a statement as you suggest would absolutely give nobody any information. It would not be worth the paper it was written on, and would encumber the files of the railroad and of the commission, and would not do any good.

The CHAIRMAN. When you have an agreement to fix rates you do not sit down and agree upon the rates at that time, do you?

Mr. PIERCE. Whenever they have an agreement fixing rates, they certainly do. Otherwise the rates are not agreed on.

The CHAIRMAN. Then, would it be possible to have a meeting of some one to agree upon rates between Chicago and New York? Do you figure out all those rates at that meeting?

Mr. PIERCE. Would it be possible?

The CHAIRMAN. Is that what they do?

Mr. PIERCE. What they do is this: The traffic officers determine just what the adjustment of the rates will be, and outline a general basis of the rates. They furnish that to the rate clerk, and that outline has to be worked out in detail so that it will be harmonious.

The CHAIRMAN. I understand.

Mr. PIERCE. But this elaborate statement worked out from the general plan given is just as much a part of the agreement, if any agreement is made, as the general skeleton that is furnished.

The CHAIRMAN. Well, is it?

Mr. PIERCE. Yes, sir; certainly it is.

The CHAIRMAN. You have a meeting and make an agreement——

Mr. PIERCE. And then after that is all worked out it is published in the form of a tariff, and on the back of that tariff the tariff carries with it the names of the traffic officers who consented to or joined in the making of those rates. It will show on the back of the tariff just what roads are parties to it, and the name of some officer of the company, representing that road, who authorizes those rates.

I do not care to devote any more time to that. We have talked about it a great deal, and a good deal of stress has been laid on it. It is not a material thing, but it is a burdensome thing in the way of machinery, and it is an expensive thing.

Mr. TOWNSEND. I do not think that the committee or anybody else wants to put a burden on the railroads, without doing some good, but it seems to me you have greatly magnified the difficulties which can come from it. I wish I knew, and I guess every member of the committee would like to know the same thing, what is actually done when these traffic men get together—what is done at that meeting before you adjourn.

Mr. PIERCE. I have stated it as clearly as I can possibly state it.

Mr. TOWNSEND. Do you think it would cost a million dollars to do what you state is done at that meeting? Could not you, as a lawyer, state what the agreement was, and make a report very briefly?

Mr. PIERCE. Yes, if there was only one tariff; but I am talking about the railroad situation as a whole, and I am talking about all the adjustments of rates that are made in the course of a year.

Mr. TOWNSEND. You make these agreements through the trunk-line system, or through some general scheme, do you not?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. And it is only the heads of the liner who meet and decide on these questions.

Mr. PIERCE. Yes, sir; they are responsible men in the traffic department. They can not send clerks or stenographers to do it. They have to send men who have knowledge of traffic conditions and who have had some experience in matters of that kind. I may have magnified it; I may have overstated the importance of the thing; but I am speaking from the bottom of my heart, as a man who has been called upon actually to undertake to work out the machinery in matters of this kind under the act—not only under the federal act, but under the state acts—and while if it was just this one thing we might be able to do it without very much trouble, yet you have got to remember that this is only one of hundreds of things that we have to do.

The CHAIRMAN. Let me see if I understand your position on that, because that is what is bothering me. If the railroad traffic men meet and make an agreement that the rates between two points on two roads shall be the same without fixing what the rates shall be, leaving it to subordinates to determine what the rates shall be, but the agreement being that they shall be the same, you think it would be useless to file that agreement, because that would mean nothing?

Mr. PIERCE. It seems so to me.

The CHAIRMAN. And it would be almost impossible, as a practical proposition, to file the agreement carrying out the rate?

Mr. PIERCE. Yes, sir; I say it would be a burdensome requirement and a useless one, in view of the fact that that very same information must be immediately followed up by tariffs, in the most elaborate shape, putting those rates and regulations into effect.

The CHAIRMAN. But suppose you only file the first agreement—that the rates shall be the same. The Interstate Commerce Commission will soon know what the rates are from the schedules that are filed.

Mr. PIERCE. Yes, sir; that is what I say.

The CHAIRMAN. Is not that all that is necessary?

Mr. PIERCE. That is what I have been trying to argue.

The CHAIRMAN. Is not that all the bill requires?

Mr. PIERCE. No, sir.

The CHAIRMAN. You make an agreement that the rates shall be the same. You do not decide what the rate shall be.

Mr. PIERCE. It requires an agreement:

If a copy of such agreement is filed with the Interstate Commerce Commission within twenty days after it is made, and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission.

The CHAIRMAN. Very well. Your high officers meet and agree that the rates between New York and Chicago over various trunk lines shall be the same, but you do not undertake in that agreement to fix what the rates on all commodities shall be. You leave that to the men who make the rate sheets.

Mr. PIERCE. No, sir.

Mr. TOWNSEND. That is the only thing the commission is interested in knowing—whether you have gotten together and agreed on this thing. That is the entire thing.

Mr. PIERCE. If that is all you want to know, and you want just a simple statement that the railroads have agreed on hog rates from Iowa to Chicago, and you do not want to know what the rates are, or anything of that kind, it is a very simple statement; but if you want to know what all the rates are, then, as I say, the preparation—

Mr. TOWNSEND. But they do not agree on that in the conference.

Mr. PIERCE. Oh, yes, they do.

Mr. TOWNSEND. They agree on that, then, at practically one time, and adjust the schedules to fit that?

Mr. PIERCE. Yes, sir.

Mr. TOWNSEND. And that would have to be filed with the commission?

Mr. PIERCE. Yes; but while the rates are fixed at about the same time they are not worked out in detail, probably, until afterwards. If you do not want the details, it is a comparatively simple matter.

There is one other thing that I want to say in connection with section 8. I have already spoken about the severe penalty there for failure to keep these notices posted as to the agent who can furnish quotations, and the impossibility of keeping those notices posted; and it seems to me that if you are going to make this requirement of the railroads, to publish rates in writing, you ought to repeal some other sections of the act with respect to keeping the rates posted. My understanding of the purpose of the act in requiring the rates to be published and posted in certain ways is so that the public themselves can examine these tariffs and find out what the rate is, and have as much responsibility in connection with knowing the rate as the railroad itself. If the railroad company is to be required, under heavy penalty, to quote the rates in writing when called upon, I do not see any necessity for the other provisions of the act which are quite burdensome and expensive, entailing this elaborate system of printing and posting tariffs.

Mr. STEVENS. As a matter of fact, you do not now post the tariffs, do you?

Mr. PIERCE. Yes, sir; we post them exactly as provided by the Interstate Commerce Commission.

Mr. STEVENS. You keep them in the office, but you do not post them.

The CHAIRMAN. Do you keep any schedules in the office now which the agent would not be required to use himself?

Mr. PIERCE. The Interstate Commerce Commission have designated certain places along our lines where we are now required to keep on file a copy of every individual and joint tariff, which is a reasonable requirement, in view of the requirements of the act that these rates shall be posted in the most convenient way to the public. They have, after taking a good deal of evidence and after hearing arguments and in view of personal experience, found that it is not practicable to keep two tariffs posted in every station where freight is received. The tariffs are very voluminous. You have not wall space in the first place to do it, and if you put them up there the public will not let them stay there.

The CHAIRMAN. I understand all that, but do you keep any tariffs now in the hands of your agents which you would not otherwise keep there?

Mr. PIERCE. Yes, sir; we keep a great many there that would not be kept there otherwise. While I do not know the exact figures, Mr. Biddle stated at a meeting a short time ago that he had had an estimate made of the expense that had been incurred in posting tariffs which in his opinion were not necessary in order to carry on the business of the company, and that it was very heavy. I do not remember what the figures were, but I know it ran up into quite a large sum of money. Even under the present regulation we keep a good many tariffs posted and on file at stations which, if it were left to the judgment and discretion of the company, would not be kept there, because they are not thought to be necessary.

Mr. TOWNSEND. How, then, would you furnish information with reference to those things when it was inquired for? Your agent would obtain it by wire from some other agent?

Mr. PIERCE. The company undertakes to do this. You understand, Mr. Townsend, that the tendency and purpose now of the railroads is to try to consolidate the tariffs as much as possible so as to have as few issues as possible. Those tariffs, as I have stated several times, are very large and they are quite expensive to get out. Probably we will have a tariff, we will say, on California fruit, to all eastern destinations, and it will name the rates to all the stations on our line, simply because there may occasionally be a stray shipment of fruit at a given station. All the stations, regardless of size, must be named, because a stray shipment of fruit may come sometimes, and it is unlawful under the act now to handle such a shipment unless you have first posted a tariff to cover it. In order to comply with the law it is necessary, at those small stations (although a shipment may never go there, and the experience has been that it has not gone there in the past), to keep posted, in accordance with the order of the commission, the tariffs prescribed by them.

We do not object to that. I want to say in this connection that I think the country at large is indebted to Mr. Clark, particularly, of the Interstate Commerce Commission, for the most careful and painstaking study that he has made of the subject of printing and posting tariffs. I think he has gone just as far as he can, under the act, to be just and fair to the railroads and to the public in respect of posting the tariffs. He has worked it out in a most admirable manner. And if the Interstate Commerce Commission were abolished to-day I believe some of the forms and methods which they have established for promulgating rates would live on as a monument to the commission forever. I think the commission has done a wonderful work in that respect. It is such a complicated system that it could not be perfected in a year, but progress is being made all the time, and I think the carriers appreciate very much what the commission has done for them in respect to helping them to work out, as far as they could, some practicable method, and at the same time with the least expense.

Mr. TOWNSEND. The interstate-commerce law, as a rule, has been very satisfactory to the railroads, has it not?

Mr. PIERCE. Well, my personal opinion is that it ought to be considered more than satisfactory. I regard it as a great benefit.

Mr. TOWNSEND. You can not see where that law ever contributed to any panic in this country, as far as the railroads are concerned, can you?

Mr. PIERCE. I am not a financier, and do not have anything to do with the financial end of it. Mr. Walker advises as to the financial end of it. I do not live in New York or on Wall street, where the panics are said to start, and do not care to make any statement about that, one way or the other.

Of course we occasionally have tilts with the Interstate Commerce Commission and do not agree sometimes with their conclusions; but on the whole I think the Interstate Commerce Commission has done wonderful work, and I for one am in favor of yielding to them the most cordial support. I am in favor of the law being strengthened wherever it ought to be strengthened. As Mr. Walker said with reference to the financial end of the bill, I am in favor of any legislation that may be enacted going as little into detail as possible, and leaving as much as possible to the discretion of the commission. The commissioners are traveling over the country constantly. They know what the interests of the shipping public demand and they know the possibility of the railroad companies practically complying with a regulation. I have absolute confidence in the commission doing the very best that can be done under the circumstances as to matters of detail.

I wish to call attention to the following language in section 9, on page 17, line 22:

And pending such hearing and the decision thereon the commission may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, etc.

This question was raised yesterday that: Suppose a schedule were suspended the night before it was to have gone into effect, and a railroad had been called upon the day before to quote in writing the rate, and the shipper had been damaged by it, and so forth, just how would that work out? I think that could be very easily taken care of by an amendment right after the word "suspend," on page 23, to the effect that—

The CHAIRMAN. What line?

Mr. PIERCE. Line 23.

The CHAIRMAN. What page?

Mr. PIERCE. Page 17.

The CHAIRMAN. You gave the wrong page.

Mr. PIERCE. I think that could be taken care of by a little amendment after the word "suspend," to this effect:

"At any time within ——— days before the schedule would have gone into effect." You can make that five days, ten days, fifteen days, or some reasonable time, so as to prevent—

The CHAIRMAN. But the difficulty now about that is a practical one. The schedule now goes into effect thirty days after it is filed.

Mr. PIERCE. Yes.

The CHAIRMAN. The parties usually will not be prepared to present a petition to have the schedule suspended until within a very few days of the expiration of that time.

Mr. PIERCE. It does not require a petition. It can be done by the commission on its own initiative without petition.

The CHAIRMAN. The commission will not act on its own initiative, on any ordinary proposition, without some hearing or some showing being made to it.

Mr. TOWNSEND. There must be a hearing.

Mr. PIERCE. They must have a hearing; but what I am trying to make clear is that in order to relieve the carrier of the penalties of other provisions of the act as to the quoting of rates, and as to the using of the schedule that has been suspended, you could say that the commission should not suspend a schedule, say, within fifteen days of the day it went into effect. In other words, if anybody was going to object to a tariff, or the commission was going to object, the objection should be taken in time so that notice could be given to the agents and to the people interested within a reasonable time before the tariff would have gone into effect.

The CHAIRMAN. Your proposition would only leave fifteen days after the tariff sheet is filed, within which the commission could—

Mr. PIERCE. You can make it ten days. I am not suggesting the time.

Mr. KENNEDY. Would it not be better to create means, with the approval of the commission, relieving the road from the penalty if the misquotation was occasioned by a suspension?

Mr. PIERCE. Yes.

Mr. KENNEDY. I understand the point to be this: That just the day or the evening before the rate goes into effect—

Mr. TOWNSEND. Was to have gone into effect.

Mr. KENNEDY. Was to have gone into effect, the Interstate Commerce Commission suspends it, and the agent quotes the rate erroneously the next day by reason of that suspension, of which he has no knowledge.

Mr. PIERCE. Yes, sir; that can be worked out either way. I do not care.

Mr. TOWNSEND. The commission never would do that.

The CHAIRMAN. What? Suspend the rate the night before it went into effect?

Mr. TOWNSEND. After it goes into effect.

The CHAIRMAN. No; but he says the night before.

Mr. KENNEDY. Suppose the rate is to go into effect to-morrow morning—

The CHAIRMAN. Involving rates to Oregon, for instance.

Mr. KENNEDY. And the commission suspends it to-night. Notice does not get to the agent out along the line somewhere, and he misquotes a rate to-morrow by reason of the lack of information on that subject. The saving clause should go in the other place.

Mr. TOWNSEND. I never thought about that.

The CHAIRMAN. Your suggestion, it seems to me, might be open to some objection for this reason. Here is a rate made, we will suppose, affecting a rate in Oregon. Shippers out there may not know just what the rates are going to be until they get hold of the tariff sheet. It may be some little time before they know, or some few days before they know. Then they must have an opportunity to consult with each other as to whether they will make objection to it.

Mr. PIERCE. My personal opinion is, Mr. Chairman, that by putting into the hands of the commission the power to suspend a tariff of this kind, you are going to create a good deal of confusion, and you are

not going to accomplish the good that you think will be accomplished. If these tariffs go into effect according to their intendment and according to their terms, everybody knows just what to expect, and I think you are taking a step in that respect that is going to result in confusion and a great deal more harm to the public than they are going to get out of it. Personally I am not in favor of investing the commission with that power.

However, that is a matter for your consideration and judgment, and if Congress sees fit to do that, I think we can undertake to stand for it and do the best that can be done under the circumstances. I do not want anybody on the committee to infer from what I have said about section 8, returning to it for a moment, that I think the provision there inflicting a penalty of \$250 for the misquotation of a rate is a wise provision. I think that is a wrong provision. I think it is imposing a penalty where none should be imposed. Rates are not purposely misquoted, and it is not possible always to be correct in the quoting of rates any more than it is in any other line of business. Nobody is ever hurt any by that. If there is any misquotation of rates it is not a very serious matter, and under this provision if anybody is hurt the man who receives the injury does not get any compensation. You are merely penalizing the carrier \$250 for doing what, in all cases, is absolutely an innocent act, without in any way providing for any compensation to the man who is actually injured. I do not see how under any provision of the act you can ever do anything else than to say that the rate as printed and established shall be the rate, without opening the door to discrimination and rebates; and I think that is one of the hardships of the act, if it is proper to so denominate it. The imposing of a fine of \$250 for what, in all cases, is an innocent act, and for what in no case repairs the wrong done to the man to whom the misquotation is given—if it is a wrong—is not wise legislation. Now, I want to say just a word with respect to section 9, the paragraph beginning with line 10:

The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, etc.

The CHAIRMAN. You refer to page 18?

Mr. PIERCE. Yes, sir; page 18, beginning with line 10.

The purpose of that provision is to open up as many through routes as possible. When you undertake to provide by law more than one satisfactory through route, you are entering into a domain which should be left to the carriers. Whenever a shipper has one satisfactory through route, that is all he is entitled to. The railroads can not complain because one through route is opened up to him. He is entitled to that. But when you undertake to go beyond that, you get into a question of car supply; you get into a question of necessary arrangements between carriers which enable them to properly and economically arrange for the transfer and handling of through business. In other words, you are getting into the domain of the internal operations of the railroads, which neither Congress nor the Interstate Commerce Commission should be empowered to go into. There ought to be a zone within which the regulating body does not come. Whenever you have gone far enough to give the

public all necessary protection, as to rates and against discriminations, and a reasonable through route over which its property shall be transported, that is just as far as Congress should go.

To give you an illustration of what I mean, let me say this:

In the Southwest—in Arkansas, Louisiana, and Texas—there is an immense yellow-pine district. We will take, for instance, the Kansas City Southern Railroad: That road penetrates that district. It is a very large originating road as to yellow-pine lumber. It intersects the Iron Mountain Railroad at Texarkana. It intersects other railroads at Kansas City. The roads through Texarkana and all its other connections through Kansas City all lead to Chicago. If a through route is established from points on the Kansas City Southern Railroad to Chicago by all of its connections at Texarkana and Kansas City, the shipper is enabled to say over which one of those routes his shipment shall go. It certainly is not to the interest of the Kansas City Southern Railroad Company, which is bringing a large train of cars of lumber to Chicago, that it should be required to stop at Texarkana and switch out one of its cars and deliver it to the Iron Mountain road, and, when it reaches Kansas City, that it should switch out another one of those cars and deliver it to the Santa Fe, and another one to the Burlington, and another one to the Milwaukee, and another one to the Rock Island; because that entails a very large amount of expense upon the Kansas City Southern Railroad. It requires a great deal of extra service. The shipper does not get any benefit from it. It does not amount to anything to him. He is getting just as good and just as expeditious transportation of his train-load of lumber from Louisiana to Chicago by the one route designated by the Kansas City Southern or by the Interstate Commerce Commission under the old law as he can possibly have. The only reason that has been urged on you as to why there should be many through routes is not for anything connected with the transportation. It is not because the shipper is not getting satisfactory service. It is because the shipper wants to, for instance, give a carload of lumber to the Iron Mountain Railroad because the Iron Mountain Railroad says, "I will buy something from you if you will give me some of your freight."

Say, for instance, that the Kansas City Southern has a satisfactory through route with us through Kansas City to Chicago. This lumberman has piling to sell and the Alton Railroad Company want to buy some piling. They go to this man who is doing business with the Kansas City Southern Railroad and they say: "Here, you are giving all your business to the Rock Island, a competitor of ours. If you will send some of it over to us, we will buy a lot of piling from you," or bridge timbers, or something of the kind. That is the purpose, or one of the purposes, for which you are asked to open up all routes.

It may be that the Kansas City Southern Railroad can get a larger division from the Rock Island than it can get from the Alton Railroad. It may be that it can make better arrangements for the through handling of its trains. It may be that the Rock Island Railroad Company has more tonnage to deliver back to the Kansas City Southern Railroad than the Alton. It may be that for the financial interest and the mutual operating interest of the two roads, as a matter of the most economical operation, that business can be better

handled from points on the Kansas City Southern to Chicago by means of the Kansas City Southern and the Chicago, Rock Island and Pacific Railway Company than over any other route. And yet, if you permit shippers, where they have one through route with satisfactory service, to designate any old way that shipments may go, you are going into the internal affairs of the railroad companies which involve questions of car supply and economical operation, and all of those things that may interfere very much with their business.

Mr. TOWNSEND. You have not stated, of course, all the benefits that could possibly come to the shipper, have you?

Mr. PIERCE. Oh, no; no. If he can get any other benefit, Mr. Townsend, by shipping a car over the Iron Mountain or over the Alton road that he can not get over the Rock Island, then he has not got a reasonably satisfactory through route. The present law says that the Interstate Commerce Commission may establish a through route provided a satisfactory through route does not exist. If there are any benefits that the shipper can get by other routes, then it is a question for the commission to determine whether a satisfactory through route exists or not. I think the old law on that question is just as broad as it ought to be, and that when you go beyond that you get into a realm that you ought not to undertake to legislate about, or make the power or the discretion of the commission any broader than it is to-day.

Railroad companies have extensive arrangements for interchange of equipment. It may be that the Kansas City Southern can make better arrangements with the Rock Island for furnishing to it equipment for Chicago shippers than it can with other roads; and this bill would deprive it of that right to use equipment. For instance, say that there is a Rock Island car down on the Kansas City Southern road, and the shipper wants to make a shipment to Chicago, and the route is satisfactory; but for some purpose connected with his business he wants to make that shipment over the Alton road. It certainly is not fair that our cars should be diverted from us at Kansas City and turned over to the Alton Railroad to carry from Kansas City to Chicago, when we have just as good rails and just as good a route as the Alton has. You can go into the thing and work it out and study the details, and you will find where this will work great injury to the carriers and not do the shippers any good in respect to any demand or claim that they have against the carriers with respect to the transportation of their property.

I just want to say one other thing, with the indulgence of the committee, and then I will close. I will ask you to turn to page 23, section 10, which provides for making certified copies of schedules and classifications prima facie evidence. I want to ask the committee to insert this amendment at the end of section 10, between lines 7 and 8:

That certified statements of the commission as to rates applicable to particular shipments shall be treated as prima facie evidence, and received as such in courts of record.

The purpose of that is this—

The CHAIRMAN. What is that?

Mr. PIERCE. The substance of it is that certified copies of statements of the commission as to what a given rate is for a given time between given points shall be received in evidence in all courts of

record. We have occurring all the time cases where there are undercharges on shipments all over the country involving small amounts—from 50 cents up to \$50. They occur, principally and most generally, not through misquotation of rates, but through errors in calculation.

Mr. TOWNSEND. You do not mean statements of the commission; you mean orders of the commission, do you not?

Mr. PIERCE. No, sir; I mean statements. Here is what I am getting at—

The CHAIRMAN. As to the rate on file?

Mr. PIERCE. Yes, sir; as to the rate on file.

For instance, we make a shipment, we will say, of a dozen cases of eggs from some point in Arkansas to Chicago, and when it gets there the agent makes a mistake in his calculation or his addition of 50 cents, we will say. He fails to collect the proper rate by 50 cents. When the matter goes into the auditing department, and they audit the rates (as they always do), they find that the agent has failed to collect the full tariff rates by 50 cents. Under the rules of the Interstate Commerce Commission we are required to collect these undercharges. They are constantly occurring, and always will occur, because you can not prevent the mistakes which give rise to them. Nine times out of ten the shipper refuses to pay it. He says, "I won't pay it. I have settled with you; I have got my shipment; and if you have made a mistake, why, that is for you." On the other hand, the Interstate Commerce Commission have construed the law (and I think properly so) as imposing upon us the burden of collecting these amounts, even if we have to do it by suit, and even though the expense involved is many times the amount of the undercharge. The result is that we may have to sue some men in the justice of the peace court in Louisiana for 50 cents; the justice of the peace knows nothing about rates, and we have the burden placed on us of coming to Washington and getting certified copies of perhaps half a dozen tariffs, because the shipment may move under a joint rate and not a through rate. Then, when we get before the justice of the peace in Louisiana, we have a controversy as to what the rate is; and nine times out of ten we lose those cases. If the railroad overcharges a man 50 cents, he can file a complaint before the Interstate Commerce Commission, and they can find that we overcharged him, and the finding of the Commission is *prima facie* evidence upon which he can base a suit in court for the recovery of that amount if we do not pay it. On the other hand, we say that where an undercharge results from error or otherwise, which we are under a legal duty to collect, we ought to be permitted to have something from the commission that will amount to *prima facie* evidence in the case and relieve us of the great task and burden of getting certified copies of tariffs and sending freight agents and traffic experts to little county seats and justice of the peace courts in order to establish these rates. That is only a fair provision, and it is a necessary one for us to have.

The CHAIRMAN. That would require the clerical force in the Interstate Commerce Commission office to certify what the rate is?

Mr. PIERCE. What they require of us now is this: If a man has a rate on eggs, and the tariff has a hundred other commodities in it, we have got to take a copy of that tariff and send it down to the commission, and they have got to certify that that is a true copy of

the tariff. If we have such a provision as I have just read, we will prepare a statement that the rate on eggs from so-and-so to so-and-so is so much, as found in tariff number so-and-so, effective so-and-so; and all the commission has to do is to turn to that page of the tariff and certify to it—which is a much simpler proposition than to have to certify to the correctness of the whole tariff. It simplifies it very much; and I think that is a reasonable request to make.

Mr. TOWNSEND. You do not require the commission to do this; but you say that when it does make such a statement it shall be prima facie evidence?

Mr. PIERCE. Yes, sir; when it does make such a statement. They can always certify those tariffs for us; but we have to pay a reasonable charge over there for doing it. In some cases the charge for certifying the tariff amounts to three or four times as much as we are required under the law to collect, in addition to all the money we have to spend in witness fees and attorneys' fees; and in that respect we have quite a burden. But I believe the decision of the commission on that point is a correct interpretation of the law, because if we are permitted to let a 50-cent undercharge go it might open the door to letting a hundred-dollar undercharge go, and might lead to rebating or something else. I believe, therefore, it is not an unfair interpretation of the law. It is, at least, a safe one. But we ought to have some reasonable way of establishing what the rates are.

The CHAIRMAN. Is that all you wish to say?

Mr. PIERCE. I think it is time for me to quit, Mr. Chairman.

The CHAIRMAN. We are very much obliged to you.

(The committee thereupon adjourned until to-morrow, Friday, February 11, 1910, at 10 o'clock a. m.)

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XV

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, February 11, 1910.

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. The special hearing this morning is on House bill 19041. We have here a committee print of the existing twenty-eight-hour law, with the insertions that would be made by the passage of this bill, for the convenience of any one wishing to consult it, and we are now prepared to hear any gentleman in favor of the bill.

STATEMENT OF DR. WILLIAM O. STILLMAN, OF ALBANY, N. Y., PRESIDENT OF THE AMERICAN HUMANE ASSOCIATION.

Doctor STILLMAN. I will say that there are here present in favor of the bill representatives of—

The CHAIRMAN. Please give your full name to the stenographer and the name of the association you represent.

Doctor STILLMAN. My name is William O. Stillman, Albany, N. Y.; president of the American Humane Association. There appear here in favor of the bill also representatives by special request in behalf of the American Society for the Prevention of Cruelty to Animals, of New York City, and the Louisiana State Society for the Prevention of Cruelty to Animals, and representatives of various other corporations.

Mr. Chairman and gentlemen, I would say that in regard to the interest which the humane corporations have at heart in this matter, it is in the main an interest which of itself in this case coincides, I think, with the commercial interests represented by the various cattle organizations throughout the country. As I understand it, there is a unanimous request on the part of the various live-stock corporations that there shall be something done in the direction of federal regulation of the minimum speeding of stock trains.

This bill that we are appearing in behalf of this morning, No. 19041, was drawn by the Solicitor of the Department of Agriculture. It, as I understand, meets the approval of the Department of Agriculture. It has also been unanimously indorsed by the American Humane Association and by the National Wool Growers' Association, which has representatives here to be heard this morning.

I think that sometimes there is a disposition to think that the interests represented by the humane corporations is one of sentiment

merely, and that they are not always governed and controlled by sanity and good sense. But I wish to distinctly repudiate any such proposition in relation to this bill. We want only what is reasonable, fair, and just on the part of all parties interested, and particularly are we concerned in insisting that our organizations shall see that the interest of the stock itself is looked after as we believe it should be. Our corporation, the American Humane Association, while it is not a prosecuting agency itself, represent subordinated societies that have prosecuted over 36,000 cases each year of cruelties, with a very large percentage of convictions, which I think is a sufficient refutation of the charge that humanitarians are not governed by a due sense of law and practical good sense in the courts. These societies care for over a million animals. They represent a membership of over 50,000 individuals in the United States.

Now, the history of the legislation on this subject, as I understand it, is this: In 1873 the first law was passed by Congress. It was approved by General Grant on March 3, 1873, and that law provided for a general regulation of live stock in transportation. It was the first law of that kind that was passed by Congress. For a great many years it was practically inoperative. There was very little done under it. It was procured through the agency of societies for the prevention of cruelty to animals. Our second vice-president was very largely instrumental in procuring its passage at that time, and we have with us this morning a representative of the Massachusetts Society for the Prevention of Cruelty to Animals, formerly presided over by Mr. Angell, now deceased, and that society was also very active in procuring the passage of that act, and it was active in prosecuting the first case under it.

Until the year 1891 very little was done, so far as the Government was concerned. Secretary Jeremiah M. Rusk, in 1891, sent out a great many circulars to the railroads, urging compliance with the act, but that is as far as he went. In 1895 Secretary J. Sterling Morton followed his example and distributed similar notices, urging compliance with the requirements of the old law. Still there was practically nothing doing so far as activity or prosecutions on the part of the Government, in enforcing the law, was concerned. But in 1897 the present incumbent of the office of Secretary of Agriculture, Secretary James Wilson, began his present campaign for the protection of live stock, and we believe it was largely through statements presented by the American Humane Association that this was done. We felt that something should be done to protect the stock over which he has exclusive jurisdiction, and we were convinced that there was great abuse of live stock throughout the country. The Department of Agriculture, as I understand it, was of the same belief. Secretary Wilson sent out invitations to the various roads and parties that were interested in one way and another, and made the following statement in a letter which I will quote, which he sent to President Roosevelt under date of January 3, 1906. He says that—

During all this time the law was being continually violated by the carriers. Some years ago special agents were put on the road to accompany stock trains in order to detect and report violations of the law. A large number of cases were collected by these agents and transmitted to the Department of Justice for prosecution in the federal courts. On account of the difficulty of securing evidence and in some cases the unreasonable requirements of the district attor-

neys before proceeding with cases, only a small number of convictions was secured.

Some time ago I felt that live stock was not being handled in the humane manner required by law and requested the Chief of the Bureau of Animal Industry to instruct the inspectors of the bureau, particularly those inspectors stationed at points where large consignments of live stock were received, to use the utmost diligence in discovering and reporting violations of the law. As a result of these instructions nearly 2,000 cases have been reported to the department, and a number of these cases have been transmitted to the Department of Justice for prosecution, and over \$10,000 collected in penalties and costs.

Difficulties arose in connection with the enforcement of the old act, which it is not necessary, perhaps, just at this stage of my remarks to go into. The railroads had assured the department that the law would be observed in the future. At the time they discovered these 2,000 violations the Secretary said:

They knew that the department was closely watching and reporting each violation of the law as it occurred, and they were naturally making every effort at least to appear to comply with the laws, and were unloading the cattle in miserably equipped pens for food, rest, and water, and, in many cases, were even unloading them upon the open prairie, to the great detriment and damage of the cattle, and to the prejudice of the owners and shippers.

This rigid enforcement of the act of 1873, which compelled them to take the cattle off the cars wherever they might be at the expiration of twenty-eight hours, whether on the open prairie or not, very naturally led up to the act of 1906, in which there was an extension granted to the owners or shippers on condition that they made the application to the railroad companies themselves. It was not optional with the railroad companies. There was also a further exception on behalf of the sheep shippers, that they could not be compelled to put in sheep at night.

Now, Secretary Wilson further continues his remarks concerning it, and what he says is very pertinent to the position we take in connection with this matter:

It is my belief that if certain other amendments to the law, hereinafter described, shall be adopted, the time during which cattle may be confined in cars without food, rest, and water may be extended from twenty-eight hours to thirty-six hours without disadvantage to the cattle.

Then he refers to a brief that was filed by Mr. Whitehead, of the state bureau of child and animal protection in Colorado, in which he says:

The points made by Mr. Whitehead in regard to inadequate facilities for taking care of cattle which are unloaded for food, rest, and water and the brutal and inhumane manner of unloading and reloading are well taken, and furnish good reason why the law should be amended in certain particulars.

The CHAIRMAN. What are you reading from?

Doctor STILLMAN. From the letter of the Secretary of Agriculture to President Roosevelt, dated February 3, 1908, as being the official statement of the inhumanity and carelessness with which the stock was transported.

The CHAIRMAN. Where is that published?

Doctor STILLMAN. This is a copy of a private letter from Secretary Wilson to President Roosevelt, sent to me by President Roosevelt.

The CHAIRMAN. It is not official and public?

Doctor STILLMAN. It was subsequently published in some document of this House, and can be procured in connection with the discussion of the stock-transportation law of 1906.

The CHAIRMAN. It could not be if it was dated in 1908.

Doctor STILLMAN. No; I beg pardon. It was dated January 3, 1906.

The CHAIRMAN. We have his official letter on that.

Doctor STILLMAN. I wish to touch particularly on some of the features bearing particularly on the questions at issue. The particular point raised by him, as I read, was that—

It is my belief that if certain other amendments to the law, hereinafter described, shall be adopted, the time during which cattle may be confined in cars without food, rest, and water may be extended from twenty-eight hours to thirty-six hours without disadvantage to the cattle.

In other words, Secretary Wilson suggested at that time that there should be such an extension, but it was made conditional on the following out of other suggestions that he made at the time, among others being one that there should be a minimum speed limitation inserted, which he stated as follows:

Provided that every common carrier, other than by water, engaged in the interstate transportation of live stock, shall maintain on all stock trains an average minimum of speed of not less than 18 miles per hour, from the time when such live stock is loaded upon or into the cars and made part of the train, until the train reaches the destination or junction point for delivery to another common carrier, with a deduction for the time necessarily lost in feeding, resting, and watering, and in the unloading and reloading for those purposes, and for such other time as the stock may be delayed by storm or other accidental causes which can not be anticipated or avoided by the exercise of due diligence and foresight.

Now, when the law of 1906 was passed, it eliminated this proposition that there should be a minimum speed provision. That was eliminated, as I am informed and as I think it has been stated in various prints, at the request of the railroads, which promised compliance with the spirit of the law and good service to the stock shippers provided that was eliminated.

The CHAIRMAN. Excuse me; that is not true.

Doctor STILLMAN. Which portion do you mean was not true?

The CHAIRMAN. It could not have been eliminated, because it was never in the law.

Doctor STILLMAN. As originally drawn I believe it was in the bill.

The CHAIRMAN. As originally drawn it may have been in some bill, but it never was in the bill that was passed.

Doctor STILLMAN. It was in some bill.

The CHAIRMAN. Yes; that might be so. You see, we have all sorts of bills. If you will look at the draft furnished by the Secretary of Agriculture upon the bill that was passed, I do not think you will find any such provision as that at all in it. I am not sure about that, however.

Doctor STILLMAN. You will find in the memorandum which was prepared at the request of Senator Hansbrough in the Senate with reference to this speed regulation that the Department of Agriculture did make that particular point in item 12 of their note to Senator Hansbrough.

The CHAIRMAN. They may have done something of that kind, or said something of that kind in a letter to a Senator, but we can not pay much attention here to things of that kind.

Doctor STILLMAN. If this bill was to be passed, the Secretary considered it essential that there should be a provision regulating the minimum speed of the stock trains.

The CHAIRMAN. Have you the report which the Secretary of Agriculture made upon the bill that did pass?

Doctor STILLMAN. I think I could lay my hands on it.

The CHAIRMAN. Did he make such a recommendation as that in his report?

Doctor STILLMAN. I think he did in a series of remarks which were made by him. The point I want to make is, What has been the result of passing the 1906 law as it stands?

The CHAIRMAN. That is much more pertinent. When you come here and endeavor to discuss the reasons for certain action that was taken by the committee, with which the committee is entirely familiar, and which you could not know about because you were not here at all, you are liable to fall into error.

Doctor STILLMAN. I have the proceedings of the committee.

The CHAIRMAN. You have not the proceedings of the committee in executive session. If you have any proposition before you now to discuss, we would like to hear from you.

Doctor STILLMAN. First, the thing that I wish to quote from is former President Murdo Mackenzie, of the Live Stock Association, which represents the collective cattle interests of the country. He wrote me as follows:

The railroads have promised us time and again that they would do everything in their power to use the extension of time allowed by the recent bill in getting more cattle to the market, but instead of doing this they have used it absolutely for their own purposes. This has proved to be very damaging to us and causes a great deal of loss and cruelty to stock in transit.

President Mackenzie declared that a minimum speed limit of not less than 16 to 18 miles an hour should be adopted, and that he is satisfied, from his large experience, that the railroads can readily live up to this very moderate requirement.

Further, as bearing on this, and as showing the opinions of the live-stock interests, I would like to quote from the resolutions adopted by the National Wool Growers of the United States at their fourth annual convention, where they passed unanimously these resolutions:

Inasmuch as the shippers of live stock from certain States in the West have suffered great loss by reason of the inhuman treatment of such stock by unnecessary delay, rough treatment, and inadequate accommodations properly to feed and water the same,

Resolved, That we petition Congress for the enactment of a law which will compel interstate railroads to transport live stock between feeding points at a speed of not less than 15 miles an hour, including all stops.

Further than that, I would like to quote from a letter from Mr. McCabe, solicitor of the Department of Agriculture, which was addressed to the Live Stock Association, a copy of which was also sent to our association, in which he says:

I desire to emphasize this point: A fair, unbiased view of the present act in operation leads to the belief that it is defective in that it fails to provide for a minimum speed limit on stock trains.

Now, the conditions resulting from this have been that there was a large number of violations. The Department of Agriculture has made something of an investigation of the violations and has analyzed the cases which they prosecuted. Quoting again from Mr.

McCabe's statement as to the result of those analyses, in the letter just referred to, he states:

Since August, 1906, to January 1, 1908, the inspectors of the Bureau of Animal Industry of the Department of Agriculture have reported over 1,200 violations of the twenty-eight-hour law.

That is to say, this law of 1906, which the railroads assured Congress at the time it was passed would be observed, and in which the provisions were inserted mainly at their request, was violated over 1,200 times, according to the reports of the inspectors of the Bureau of Animal Industry in the Department of Agriculture. Mr. McCabe proceeds:

Between 250 and 300 cases have been tried and penalties fixed. In all, under the act of June 30, 1906, \$24,306 in penalties have been collected up to the present time. This is, of course, exclusive of costs, which will probably amount to between \$7,000 and \$8,000 in addition. There are now 900 or 1,000 cases pending in the courts.

The department has 167 cases against one of the largest of the cattle-carrying roads now awaiting trial, 122 against another, and 66 against a third. These roads are the most confirmed violators of the law.

Mr. STAFFORD. Was any defense in mitigation of the omission to comply with the law raised by the railroads in these cases?

Doctor STILLMAN. I would suggest, sir, that inasmuch as the Department of Agriculture will be represented this morning by its solicitor, that that question be taken up with him.

Mr. STEVENS. Have you any information as to what railroads those are against which so many cases are pending?

Doctor STILLMAN. I have a copy of the report of the Secretary of Agriculture giving the names of those roads. Probably it will be better for you to take it up with the solicitor of the department, who is present.

Mr. STEVENS. Very well.

Mr. KENNEDY. Has your association, as an association, ever taken up the thought of asking Congress to limit the distance that cattle might be transported on the hoof?

Doctor STILLMAN. No.

Mr. KENNEDY. Why do you not consider that?

Doctor STILLMAN. Because we believe that the minimum speed provisions, as I will show later, would get the stock to market without difficulty. I will show that later.

Mr. KENNEDY. If you had the packing houses distributed through a large territory, so that you would not have to transport the live cattle long distances, there would not be any such cruelty to animals, and would you not be getting a more regular adjustment of labor in this business? What is the necessity of carrying cattle a thousand miles to Chicago in order to be butchered there?

Doctor STILLMAN. I think, as far as the commercial aspect of the thing is concerned, you would find it difficult to split up the packing establishments in Chicago and Omaha and Kansas City and those places and do it locally. It could not be done economically to as much advantage. It would be easier for the railroads to put on faster engines and get a better speed on their trains than to have the whole packing industry changed.

Mr. KENNEDY. You are interested in the cattle industry?

Doctor STILLMAN. Yes.

Mr. KENNEDY. Then do not let me interrupt you.

The CHAIRMAN. He does not represent the cattle interests.

Mr. WANGER. Sentimentally or on the practical side? Did you understand Judge Kennedy's question when he asked you if you are interested in the cattle industry?

Doctor STILLMAN. No; not commercially, of course. We have no interest in that at all. Our interest is a sentimental interest.

Now, in further continuance of the number of prosecutions, in order to bring them up to date, showing the activity of the Department of Agriculture in enforcing the law of 1906, I will say that the report of the solicitor for 1909 makes the further statement that there were 208 cases for recovery of penalties under the twenty-eight-hour law prosecuted as a part of the work done by his bureau—

a part of which—

As he says—

together with a large number of the 828 cases undisposed of at the close of the previous year, resulted in the collection of penalties and costs amounting to \$85,029.85; 33 cases, including some that were undisposed of during the preceding year, resulted in verdicts for the defendants; 81 cases were abandoned because of lack of sufficient evidence to maintain them; and 305 cases, including those undisposed of at the close of the previous year, were pending at the close of the present year.

I only read this to show the enormous number of violations and of successful prosecutions that prove the violations, showing the necessity of something being done in regard to the law; and this bill, we claim, will be a practical cure for it. There was an enormous percentage of successful prosecutions, a very large percentage. Mr. McCabe in his report adds:

At the close of the preceding fiscal year 828 cases were pending in the courts. Of these, together with part of those reported during the present fiscal year, 617 were determined in favor of the Government and resulted in the collection of penalties to the amount of \$73,490 and costs aggregating \$11,539.85, an increase in penalties and costs over the previous year of \$11,960 and \$4,338.14, respectively. A statistical and explanatory table of these cases is inserted on page 31. Only 33 cases, or about 5 per cent, resulted adversely to the Government. Eighty-one cases were abandoned because of lack of sufficient evidence to maintain them. There were pending in the courts at the close of the present fiscal year 305 cases, a substantial part of which, it is obvious, were cases reported in previous years and remaining undisposed of on account of appeals and other dilatory causes.

Then he also goes on with other details in regard to the prosecutions being carried on at that time, which are not particularly important or relative to this discussion. But from this large number of cases you will see that a very serious condition of things has arisen. I believe it will be interesting for you to inquire into the investigations of the Department of Agriculture in regard to the nature of these violations. The reports, according to Mr. McCabe's letter, which I previously read from are to this effect:

An analysis of the cases now pending against the different railroads of the United States for alleged violations of the twenty-eight-hour law shows that, as a rule, the defendants have kept stock on the rail without water, rest, and feeding well over the statutory period. In a block of 42 cases against one road the time of confinement varied from thirty hours to fifty-seven hours, and the average confinement without water, rest, and feed was forty-two hours. Twenty-four cases are pending against another road, and in these the period of confinement varied from thirty-eight hours to forty-five hours, the average confinement without water, rest, and feed being thirty-nine hours. In a block of 22 cases against another road stocks were confined from thirty-three hours to

forty-five hours, the average confinement without water, rest, and feed being thirty-nine hours. In a group of 20 cases against another road the period of confinement varies from thirty-three hours to fifty-eight hours, the average time of confinement without water, rest, and feed being forty-four hours.

You will notice from this, gentlemen of the committee, that in these cases that were proved there was certainly very gross cruelty. There was a maximum of fifty-eight hours in these cases without food or water and an average of forty-four hours.

Mr. STAFFORD. In those instances that you have just enumerated is there anything to show the periodicity of their haulings, as to whether they were in one part of the year or whether they were stretched over the whole year?

Doctor STILLMAN. I could readily give that by referring to the report of the department, which gives them in chronological order. They could be collected and worked out. Don't you believe that Mr. McCabe ought to be able to give you that data offhand without my taking time to extract the same from the report?

Mr. STAFFORD. I thought there might be exceptional weather conditions, which would prevent the transit of trains as usual.

Mr. ADAMSON. Yes. I would be glad to know whether it is just occasionally, from an emergency, or whether the railroads are in the habit of doing that sort of thing.

Doctor STILLMAN. My impression from looking over these reports is that they are spread evenly over the year. But it is easily proven by the report of the Department of Agriculture, which gives the dates of all prosecutions and the dates of all violations.

Mr. STEVENS. It would be a great deal clearer if you would give the names of the railroads, so that we can tell ourselves as to the character of the service they have.

Doctor STILLMAN. I am simply pointing out the fault in the present law, leaving it to the Department of Agriculture to go into the details. They have all those things at their fingers' ends, and I thought it would be more satisfactory to the committee if its members could take up that feature of the discussion with the Department of Agriculture. Now, Mr. McCabe says further:

There are 122 cases pending against one road, and the average time of confinement without water, rest, and feeding in these cases was forty hours, the actual time of confinement varying from thirty-one hours to seventy-one hours without water, feed, or rest. An examination of 20 cases against another road shows that the period of confinement varied from thirty-one hours to fifty-nine hours, and that, as an average, the stock were confined for forty-five hours without water, feed, and rest. Clearly the twenty-eight-hour law is not being obeyed.

Now, gentlemen, seventy-one hours is a long time to go without water, food, or rest.

Mr. RICHARDSON. What do you mean by "cases pending?" Are they pending before the commission, or where?

Doctor STILLMAN. There were 122 cases pending for prosecution in the courts.

Mr. RICHARDSON. None of them have been tried?

Doctor STILLMAN. Yes; I think these have all been tried and settled.

Mr. RICHARDSON. Were the roads convicted and judgment rendered against them?

Doctor STILLMAN. I have just read a long list of the convictions.

Mr. RICHARDSON. I beg your pardon; I have just come in.

Doctor STILLMAN. This is an analysis of these cases.

Mr. ADAMSON. You know, Doctor, in the court-house there is a wide variance between the allegata and the probata. They allege what they please, and they prove what they can, on a trial.

Doctor STILLMAN. Yes; I was just reading this analysis. Mr. McCabe says in his letter:

An analysis of the cases now pending against the different railroads of the United States for alleged violations of the twenty-eight-hour law shows that, as a rule, the defendants have kept stock on the rail without water, rest, and feeding well over the statutory period. In a block of 42 cases against one road the time of confinement varied from thirty hours to fifty-seven hours, and the average confinement without water, rest, and feed was forty-two hours. Twenty-four cases are pending against another road, and in these the period of confinement varied from thirty-eight hours to forty-eight hours, the average confinement without water, rest, and feed being thirty-nine hours. In a block of 22 cases against another road stock were confined from thirty-three to forty-five hours, the average confinement without water, rest, and feed being thirty-nine hours.

It should be remembered, gentlemen, that the railroads are operating in violation of an act which they helped to frame.

The CHAIRMAN. They had nothing to do with the framing of it.

Doctor STILLMAN. I am reporting this from the letter of the Department of Agriculture. It is said here:

Remember, however, that the railroads are operating in violation of an act which they helped to frame.

The CHAIRMAN. That is still worse. McCabe was crazy when he wrote that. [Laughter.]

Doctor STILLMAN. Am I permitted to make any further report on this, bearing on this quotation?

The CHAIRMAN. Go ahead.

Doctor STILLMAN [reads]:

As it stands on the statute books to-day, the twenty-eight-hour law contains provisions which the railroad company themselves were instrumental in inserting. In return for the concession which provided for an extension of time to thirty-six hours at the request of the shipper, the roads promised to obey the law, and, in cases where the shipper signed such a request, to use the additional eight hours in an honest effort to get stock to destination.

We think they have not operated in good faith, and it is proved by the large number of successful prosecutions against them.

The CHAIRMAN. I do not quite see the point to all this. Here is a law which you say they are violating, and under which they are subject to severe penalties. You propose simply not to change anything, but to add another law for them to violate.

Doctor STILLMAN. Gentlemen, what we feel to be necessary is to cause them to hurry their trains to get them in under the limit.

Mr. ADAMSON. Don't you think you ought to hurry those cases?

The CHAIRMAN. Do you think they will hurry because we try to compel them to hurry?

Mr. ADAMSON. If you have a large number of cases pending you ought to hurry them. Those cases ought to cease to be pending.

Mr. RICHARDSON. You are not complaining of the law, but of the enforcement?

Doctor STILLMAN. No. They are attempting to enforce it faithfully.

Mr. RICHARDSON. You think the law is all right as it stands?

Doctor STILLMAN. No. We think there ought to be a minimum speed regulation in order to make it a satisfactory law.

The CHAIRMAN. I can not see the point of trying to pass a new law simply because the existing law is not properly enforced by the Government.

Doctor STILLMAN. I think it is being properly enforced. I think they are endeavoring to enforce it. There are a large number of cases there, but it would be made easier for the Government if there was a minimum speed limit established.

Mr. ADAMSON. Why do you not try those cases?

Doctor STILLMAN. The cases are being pushed through by the prosecuting officers very satisfactorily. What we want is a provision that will make this present law a practical working law. I will take up in a minute the effect and application it would have.

Mr. KENNEDY. They can not comply with the existing law unless they run their trains fast?

Doctor STILLMAN. They can comply with it, but they comply very unsatisfactorily.

Mr. KENNEDY. If they comply with it, will not that regulate their speed?

Doctor STILLMAN. There are a great many of them that do not comply with it.

Mr. KENNEDY. If the courts compel compliance, will not that regulate their speed?

Doctor STILLMAN. No, sir. They can stop and dump their cattle on the prairie and in insanitary pens where they are not properly fed.

The CHAIRMAN. Can they, under the existing law?

Doctor STILLMAN. It is up to the Department of Agriculture.

The CHAIRMAN. You are maligning either the law or the Department of Agriculture.

Doctor STILLMAN. What I mean is that the law has proved to be more or less a practical failure to meet the conditions.

The CHAIRMAN. I agree with you on that, but really I do not quite see the point. That is the reason I am interrupting you. The point I am trying to get you to show is how, if the penalties under the existing law do not deter the railroads, how the enacting of a new law would.

Doctor STILLMAN. A minimum speed law would have the effect of getting the cattle to destination and securing good feeding. I have also endeavored to show where there is grave carelessness on the part of the roads, where they have run their trains sometimes at a slower speed than a man would walk.

Mr. RICHARDSON. You had better go on with your statement.

Doctor STILLMAN. Doctor McCabe states further [reads]:

A very careful analysis has been made in my office of 800 cases of violations of the act now awaiting trial, with a view to determining the average rate of speed maintained by the different railroads on stock trains. In a group of 42 cases against one road the average running time for such trains varies from 4 miles an hour, a fast walk, for a haul of 364 miles, to 21 miles per hour for a haul of 977 miles, a very good rate of speed for a stock train. The average rate of speed maintained in all these cases was only 9.5 miles per hour. In a group of 24 cases against another road the rate varied from 1.8 miles per hour for a haul of 57.7 miles, to 14 miles per hour for a haul of 545 miles, the average speed maintained being 12.3 miles per hour. An examination of 22 cases against a third road shows that it maintained the exceedingly low rate of 5.4 miles per hour on an average.

I may be wrong, but I do not believe that any member of this committee would be willing to concede that that is a right or proper condition, or that cattle should be transported at any such low rate of speed as that. And it is facts like these that have induced us to ask for the passage of an amendment to the old law which will rectify these abuses under the old law.

The CHAIRMAN. Doctor, that rate of speed was maintained in these cases where there was a penalty inflicted on the railroad companies for violation of the existing law?

Doctor STILLMAN. It was for violation of the time limit, but there was no speed limit.

The CHAIRMAN. I understand. It was those cases, very likely, where, because of the slow speed of the train, they violated the existing law, and they suffered the penalty for that?

Doctor STILLMAN. Yes. We want to have it determined what is a reasonable speed for stock trains, and also eliminate an abuse which I should not have referred to, but which will be referred to by the stockmen presently.

Mr. RICHARDSON. Do you propose a limit of speed for a stock train?

Doctor STILLMAN. Yes, sir. We are proposing 16 miles an hour, which is a very low speed. Mr. Gooding tells me he has been on stock trains full of sheep which have been put on a siding while the dead freight was being pushed through to market.

Mr. RICHARDSON. What purpose could the railroad have in running at a speed of 1 mile and a fraction of a mile per hour?

Doctor STILLMAN. It is carelessness in regard to it. They regarded live stock, as one railroad man expressed it, as though they were no more than rusty rails.

The CHAIRMAN. That is not as fast as a man walking.

Doctor STILLMAN. No, sir. I have given this analysis to show the necessity for a speed limit.

Mr. KNOWLAND. Was not that caused by an unusual delay?

Doctor STILLMAN. Here are a great many cases. It is not simply an individual case or an isolated case. We have taken 42 cases involved in one, 24 in another, 28 in another, and 22 in another.

The CHAIRMAN. All of these cases were cases where there was a violation of the law?

Doctor STILLMAN. Yes.

The CHAIRMAN. The railroad companies admit that they violated the law in those cases?

Mr. ADAMSON. You spoke of 5 miles an hour as a very common rate there. It seems to me it would be very poor and inexcusable economy in the railroad management to encumber its tracks for a long time with a train going at that slow speed.

Doctor STILLMAN. Perhaps you do not bear in mind, as suggested by Mr. Scott, of the Illinois Humane Society, that a good deal of this time is waiting time on dead freight, while fruit trains are being pushed through.

Mr. ADAMSON. They have to take the siding also for passenger trains?

Doctor STILLMAN. Yes; and we believe that live stock ought to come next.

Mr. KENNEDY. In maintaining these low speeds they have to incur the penalties of existing law. Why could we not reach the same end by simply increasing the penalties of the law as it is?

Doctor STILLMAN. They are not pushing the stock through with sufficient rapidity. You would remedy the matter by increasing the penalties.

Mr. KENNEDY. The existing law requires that they must get the stock through in a limited time, and if they do not, they are subject to a penalty. If they run slowly they incur the existing penalties.

Mr. ADAMSON. Cattle have become more valuable than some people now, and I do not see why you do not rush them through on express trains. [Laughter.]

Doctor STILLMAN. The point made by Mr. Mann is a good one as to the violations of the law that we are considering. It is a case of cancer that should be cut out of a healthy individual. We are considering the causes of failure, and we should endeavor to cure this situation. We propose to supplement this law by an additional provision.

I have a series of fresh statistics that I will submit later, covering the average speed of stock trains throughout the country that are not violating the law.

The CHAIRMAN. Is there any way of getting that information?

Doctor STILLMAN. Yes. It is obtained by the use of time cards. We have made arrangement to get those.

The CHAIRMAN. That is very pertinent.

Doctor STILLMAN. Yes; in one sense that is a weak point here, and in another sense it is a very pertinent one. It shows where the evil is that we must meet.

The CHAIRMAN. I can not quite see why, when a law is violated, you should make another law in the same connection for another offense.

Doctor STILLMAN. There has been this large number of offenses, and there has been this condition of very slow speed; and then I will presently show to you that if there is a minimum-speed provision it will eventually wipe out a lot of these prosecutions. The less prosecution there is, the better.

Mr. STEVENS. You have not shown in all those violations what is the character of those roads. All those roads, so far as I know, may be four-track roads, or they may be two-track roads. But you have not informed us of the conditions.

Doctor STILLMAN. That will be explained by the Department of Agriculture. That will cover every point you wish. I have not prepared myself for that part of it.

Mr. STEVENS. Why could you not tell us as you go along?

Doctor STILLMAN. I have not prepared myself on that. I thought it was legitimate for the Department of Agriculture to give you the details of that. However, I will not detain you very long. I will give just one or two other statements in regard to these low speeds of the stock trains, together with the average throughout the country in all cases of violation, and then follow it up with other pertinent matter. It will take only a moment. There are only a few lines here [reads]:

One of the big live-stock carrying roads, now a defendant in 28 cases of violations of the act, maintained in these instances a speed of 3 miles per hour for a haul of 150 miles, and 12.8 miles per hour for a haul of 480 miles, the average speed being 10 miles per hour. One of the most persistent violators of the law is made a defendant in 122 cases. It maintained an average running time of from 1.9 miles per hour for a haul of 198.5 miles to 15.6 miles per hour for

a haul of 613.2 miles. Three other roads maintained an average of 6.4 miles per hour in 14 cases, 11 miles per hour in 15 cases, and 9.7 miles per hour in 167 cases. The average running time of stock trains in the 800 cases examined was 9.4 miles per hour.

The point I would like to make is that in the case of the roads that have been the violators of the law the average throughout the country has been only 9.4 miles per hour. That is the reason we ask that something should be done to hurry these trains up. Stick a spur in them, because it would meet the evil.

There is another point I wish to refer to here. These statistics are not brought up to date.

Mr. KENNEDY. As I understand, in the short haul, where the haul is comparatively short, their average speed is much lower than where they have to go 600 miles?

Doctor STILLMAN. That is right.

Mr. KENNEDY. That shows that they are trying to observe the law and run their trains faster where the distance is greater and trying to keep within the existing law and sidetrack the trains that go a short distance, so that evidently they are trying practically to keep within the provisions of the existing law.

Doctor STILLMAN. I would not say they are trying very hard to keep within the existing law, because they have still been convicted of violating it. As a matter of fact, they can have longer runs at a higher rate of speed.

Mr. KENNEDY. There are some features of that law that there is no defense to except compliance. No amount of effort is a successful defense unless they comply.

Doctor STILLMAN. I will say that in the statement of the Solicitor of the Department of Agriculture it is stated, referring to the speed of stock trains, that present conditions are referred to, and that there is some little tendency to improvement. I had in my hand here a telegram from Solicitor McCabe, in which he says that the statements in his letter, from which I have just read, referring to the speed of stock trains, apply to present conditions. This is the telegram:

WASHINGTON, D. C., February 4, 1910.

DR. WILLIAM O. STILLMAN,
President American Humane Association,
Albany, N. Y.:

Your letter received. Statements in my letter referring to speed of stock trains and need of minimum speed requirement apply to present conditions. Probably some improvement. Have no additional data.

McCABE, Solicitor.

Now, gentlemen, how would a minimum-speed law work as applied to thirty-six hours at 16 miles an hour? It would result in hauls of 576 miles during one haul. If applied to the twenty-eight-hour limit, it would result in 448 miles being hauled during one haulage.

Now, there is a very pertinent fact that comes in connection with that, and that is this, that curiously enough throughout the country the average distance to be hauled from point to point for the better shipment and care of stock in loading and unloading is 500 or 600 miles. That is very clearly set forth by Mr. Mann in the discussion I have here by him of an amendment to the law in 1906, in which he brings out, on page 8, the fact that the distance of 500 to 600 miles happens to be the actual distance between the markets and the points of shipment or reshipment, and this is a condition which can not be

changed, and should be considered as the one to which the law must apply.

Mr. WASHBURN. Page what?

Mr. WANGER. It is in House Report No. 2661, Fifty-ninth Congress, first session.

Doctor STILLMAN. Yes; House Report 2661, March 27, 1906.

Mr. KENNEDY. That was the hearing, was it not?

Doctor STILLMAN. It was a report or memorandum presented by him with regard to the bill. The distances have not changed. I could quote to you one city from another, from Kansas City to St. Joe, and from East St. Louis to Chicago, and from Chicago to Pittsburg, and Buffalo, and so on. Substantially we believe Mr. Mann was correct in his statement, that is does run from 500 to 600 miles between points where they have the conveniences for the humane shipping and unshipping of stock.

The practical point I want to make in connection with this whole matter is that a minimum speed of 16 miles an hour would result, in a thirty-six hour haulage, in a distance of 536 miles. In other words, if you have a minimum-speed law, you will enforce the carriage of your stock within the limits prescribed by the law instead of the present conditions, which produce violations of the law.

Mr. WANGER. You mean not only avoiding violations, but the necessity of intermediate feeding?

Doctor STILLMAN. Yes. As Mr. Mann has pointed out, the loading and unloading in itself is more inhumane than the extension of time; the prodding and frightening of cattle, and getting them out of pens into the mud and mire, with unsatisfactory food; and the range cattle that are alarmed and agitated and shivering, and have not the slightest disposition to feed. If you can get the unloading done in a center of industry, where the cattle can be properly fed in a large and properly constructed yard, it would be more satisfactory, and I think the sixteen-hour limit will eliminate largely the complaints that have existed under the present law.

The CHAIRMAN. Doctor, have you had this matter called to your attention—the law of 1906 providing that the extension of time could only be made upon the request of the person in whose custody the stock were, and it should be a written request, separate and apart from any printed blank or other railroad form? The idea was that the railroad companies should not be permitted themselves to present to every shipper of live stock a form and ask him to sign it before making an extension from twenty-six to thirty-eight hours, but that the shipper, on his own motion, where he thought it was necessary, would be permitted to make that request. Do you know whether, as a matter of fact, it is the custom of some of the live-stock carrying railroads to tell every shipper that they must sign a form which is presented to him by the railroad company, asking for an extension to thirty-six hours, under the threat that if he does not sign it they will end the twenty-six hours at some point where the live stock has to be unloaded without due facilities, in order to incommode the live stock and the man who has charge of it as much as possible?

Doctor STILLMAN. I thank you, Mr. Chairman, for bringing out that point, which, I believe, is notorious to anyone familiar with the subject. It has been pointed out by the Agricultural Department, and it constitutes only an additional reason for this legislation and

an additional proof to the effect that the roads are not in good faith carrying out the provisions of the law, but are seeking by every possible means to evade it.

Now, reverting to the point of speed at an average of 9.4 miles per hour, that rate of speed is maintained by the roads which are shown to have violated this law when they had only succeeded in making a haulage of 263 miles and a fraction in twenty-eight hours, or in thirty-six hours, 33 miles; and does not that show conclusively that unless there is a provision of this kind they can not get into market in time and put their cattle in pens?

Mr. RICHARDSON. You say 16 miles per hour accomplishes the haul or journey in twenty-eight hours, but is it not just as important that you should prevent that railroad which is making the number of miles it is required to make in twenty-eight hours from backing off at an unseasonable hour at night and at a place where they have no accommodations to receive the cattle? You say it is questionable whether they are acting in good faith under the present law. If we put in that provision, would it not be a punishment to the stock in the way of added inconvenience and everything else?

Doctor STILLMAN. I do not see how it would affect the stock except to get it to market more quickly.

Mr. RICHARDSON. If there were no places for them for feeding or stalling, would not the condition be worse than it is under the present law?

Doctor STILLMAN. The average distance is only 560 miles between the main points.

The CHAIRMAN. Judge, you came in late. I do not think you quite understand the bill. The proposition is not to change the hours, but the speed of the trains. It will still permit thirty-six hours, upon request of the person in charge of the stock.

Mr. RICHARDSON. My idea was that even after compliance with all of that the trains would be compelled under a strict enforcement of that requirement to stop at places where it would be uncomfortable and unsatisfactory, and everything else.

Mr. KENNEDY. Suppose that cattle are loaded within 150 miles of their destination and a train at the point of this shipment is coming along with a large train load of cattle in transitu that will have to go on rapidly toward to the feeding point or the road will be compelled to violate the law as it exists by permitting the new shipment to stand on the siding until they can get an engine. By hurrying on the other shipment they could possibly observe the existing law upon both those shipments, but if they attempt to put the cars on this train and retard its movement and make the speed limit that you have mentioned, they might fail on both shipments. Would not the passing of a speed limit, as well as a time limit, tend to embarrass rather than to help the situation?

Doctor STILLMAN. It is not the belief of those who are practically familiar with it, and some of the stockmen from the West will explain how it will work. It seems to me in the individual instances where your argument would apply there would be perhaps one out of two or three hundred cases where it would not work.

Mr. KENNEDY. I suppose that shipment would stand on the siding there for a while until they could get an engine that would be availa-

ble for hauling it, and it still might get in within the time limit by making a less rate of speed than your speed limit would fix for it, while if you retarded the other train that has been a long time in passage by holding it up with these extra cars it can not make its time limit.

DOCTOR STILLMAN. I am not an authority on that, but I think the opinions of practical men on that, and particularly the opinions of shippers who have experience, would be more valuable than mine, which would be more or less necessarily an instance of snap judgment.

It seems to me, in conclusion, gentlemen, that while the present law is largely complied with throughout the country there have been some persistent violators, and it seems to me if there is anything to be adduced from the analysis made by the Department of Agriculture as a result of prosecutions they have made, numbering many hundreds, the minimum speed is the thing necessary to complete and round out that law. That is what the stockmen and the Department of Agriculture believe, and that is what our humane societies throughout the country believe, and I do not know of anyone opposed to it, unless it would be the railroad interests. They come along, of course, with the practical question of the engines, and the movement of freight, and the time in which it can be hauled. They load their trains up so economically that they can not get up the requisite speed. We say that the economic side of the question ought not to weigh against the humane and civilized one and against the interests of the shippers who want to get their stock to market within a reasonable time. There is a tremendous shrinkage when they do not, speaking from the commercial point of view. There is a great loss that way to the shipper. And it seems to me we have the right to believe that their interests ought to be protected, and that as a civilized community we ought to consider the proper and humane treatment of the stock as well.

I have other data here, but I will not take time to quote it. I will finish in a moment. We ought to consider that most of the stock shipped is shipped for food purposes, and I think we ought to consider the fact that stock that is kept without food or water or rest for many hours, sometimes seventy-one hours, becomes fevered, becomes poisonous, develops ptomaines, as our friends the veterinarians and doctors declare, which render it unfit for food purposes. That, I believe, is a pertinent matter for you gentlemen to consider. It is not a Utopian proposition or a dream proposition. It is a proposition well known to the sportsman and the hunter and to other people, that where an animal is harried and hurried, its flesh becomes poisonous.

It is perhaps unnecessary to go into the point as to what the effect of this law would be in the East and the West, but I would say that in the East a provision of speed like this would eliminate largely all cause of complaint, because most of the stock would be carried to market within twenty-eight hours. In some of the States, as you are already aware, there is a speed provision, so that this is not a new or experimental proposition. The present condition is an absolute disgrace to civilization, and I hope that the time will come—in answer to our friend the Judge there [Mr. Kennedy], and to the question that he proposed in the earlier part of this hearing as to subdividing and scattering the packing interests—when stock will

be killed nearer to where it is raised and shipped in cold storage, and that all shipments of stock brought up on the ranges and crowded into cars subject to unusual noises and changes of temperature and under alarming and unnatural conditions, which are cruel, will come to an end. At present we simply have to accept a part of it as necessary cruelty resulting from present conditions. We certainly have not reached that point where we can consider that question now, although it is a question of humanity.

Now, there is a proposition in this bill to create a flat rate of 16 miles an hour, or where the railroads feel that they can not conform to the provision of 16 miles an hour, which seems to be very low in view of the actual performance on many roads, they can then appeal to the Interstate Commerce Commission to grant them immunity from that, and fix a lower rate of 12 miles an hour. That should be absolute. It seems to me that is low enough in the interests of humanity and in the proper interest of the shipper.

The great difficulties in connection with this on the part of the railroads are two: First, the disposition to sidetrack live stock and rush through fast freight that is paying a better rate; and, second, the tendency for economic reasons to overload their engines, which retards their speed. They can not get up the speed with the loads they put on.

We believe that all the persons present in behalf of this measure desire to compel the roads to do what is absolutely necessary to meet these conditions. It has been proposed by one or two parties that the whole question should be referred to the Interstate Commerce Commission. We have preferred that they should merely settle any grievances arising under it, believing that was the more just method, but that the general question should be settled here; that it was perhaps fairer and more just to have Congress take up the general question of the flat-rate provision, rather than throw the whole thing on this already overworked commission and have the question come up here year after year and compel the shippers from the West to travel a long distance to come here and appear before the commission and have hearings and rehearings. We believe it is fairer and more just and more reasonable to have this matter heard by you, gentlemen, and thrashed out on the floor of both House and Senate and submitted to the Executive once for all, so that there can be a fair understanding, rather than have the thing simply brought up here year after year before the Interstate Commerce Commission. That is our position.

Mr. STEVENS. Is it not a question of economics, after all? If they transport freight faster for which they make a higher charge, does that not imply that they do not at present charge enough for the transportation of live stock? Is not that the prerogative of the commission to examine?

Doctor STILLMAN. I entirely agree with you that it is a question that may be acted upon by the Interstate Commerce Commission, and under the provision that we have incorporated here, that where roads from physical causes can not live up to it—

Mr. STEVENS. I was not inquiring about the physical causes. I was inquiring about the economic reasons as to why some roads sidetracked cattle in order to get dead freight through as an economic proposition.

Doctor STILLMAN. It seems to be a fair proposition that you should hear both sides of this question, and then you can say whether the proposition that there should be a minimum of not less than 12 miles an hour in order that our friends the dumb creatures should receive a moderate degree of fair treatment is reasonable or unreasonable. We consider that it would not be an unreasonable provision.

Mr. TOWNSEND. There would not be anything to prevent taking into consideration this provision of the law, if enacted, fixing a just and reasonable rate of speed at which stock could be carried?

Doctor STILLMAN. No, sir. I have not looked into that point particularly, but it seems to me this is a very cleverly drawn law. It was drawn up by Mr. McCabe from his long experience with the actual workings of the law.

Mr. ADAMSON. If the railroads charge more for the transportation of cattle, they might be able to carry it more satisfactorily and speedily.

Doctor STILLMAN. They charge enough now, I suppose.

Mr. KENNEDY. When they carry cattle a thousand miles there is no way of doing it humanely.

Doctor STILLMAN. We believe that a speed rate of less than 2 miles an hour is an outrage.

Mr. KENNEDY. The taking of these cattle off the trains and attempting to feed them, as you describe there, when they are nervous and frightened and agitated and have no disposition to eat, is unfortunate, and our effort in attempting in a detailed way to regulate the method of their handling is liable to contain more of mistakes than sane judgment.

Doctor STILLMAN. All that is attempted in this bill is this: To say that you must get them through at a certain rate of speed, which would naturally result in their automatically receiving and delivering the cattle at well-established places, where they have conveniences for the reception, rather than on the open prairie. It gives them a better chance for humane treatment. Further, the point you make would be largely met by the provisions of the present law, that they should be properly fed and cared for. The detail of that is left with the Agricultural Department to determine.

Mr. KENNEDY. When the cattlemen hurry their cattle to market when the market advances, the railroads can not discriminate as to whose cattle they accept or reject. They must afford equal accommodations to all. They sometimes have more cattle offered for transportation than they have engines to haul them with or yards to pen them in.

Doctor STILLMAN. They could get more engines.

Mr. KENNEDY. But how are they going to operate their business and not offend against one or the other of these regulations?

Doctor STILLMAN. I think, sir, a great many of the men who have examined this subject, cattlemen familiar with local situations, say that as nearly as they can judge a minimum speed of 12 or 16 miles an hour would be an adequate remedy, and we have offered the alternative here, according to the decisions of the Interstate Commerce Commission, which is a fair and just provision, to guard against these difficulties. The Agricultural Department, after looking over the matter very thoroughly, recommended 18 miles an hour. Some of

the roads actually transport stock at the rate of 30 miles an hour and some at the rate of 20 miles. The great abuses occur from the persistent sidetracking and the neglect of the stock; and that, naturally, we are interested in.

Mr. KENNEDY. Do you think it would be safe legislation for us to provide here that the railroads would have an option to refuse shippers to take their cattle for transportation at all?

Doctor STILLMAN. As I understand it, there is no question of car shortage considered in this. We are not studying that question. The conditions exist at present. We say, when you do put them on and take them to market, for God's sake do not leave them there suffering and dying. Why, gentlemen, our investigations showed that there were over 100,000 head of stock taken off the cars dead each year, on an average.

Mr. ADAMSON. Some other freight must be retarded if this live stock is hurried through. You must come to the point and say whether some other freight must give way.

Doctor STILLMAN. We say that this is just and in conformity with the dictates of humanity. The whole tendency of the age is toward humanity and tenderness in the treatment of all living creatures, including criminals and children and animals.

Mr. ADAMSON. Are you going to authorize that preference by a higher rate of freight to be charged, or how?

Doctor STILLMAN. Is not that a matter that is left with the Interstate Commerce Commission?

Mr. ADAMSON. What do you think about it?

Doctor STILLMAN. I say that is a matter left with the Interstate Commerce Commission, and that is not involved in this bill.

Mr. ADAMSON. It is involved in the subject. I do not know whether I am in favor of the bill or not, but I try to go into a subject when it is presented.

Mr. RICHARDSON. Have you not contended before this committee in the past two years, since the subject has been up before us, that a too great rate of speed for cattle would hurt them?

Doctor STILLMAN. Yes.

Mr. RICHARDSON. What is the maximum speed that would hurt them?

Doctor STILLMAN. In some reports that I have read the statement was made that experts were willing to concede a maximum of 30 miles an hour. Mr. Chairman, you will correct me if I am wrong about this, because you carry all these things in your head. Thirty miles an hour would be reasonable if there is a fair roadbed. At 60 miles an hour you would throw the cattle down and they would get injured. You know you can push a good horse up to 10 or 12 miles an hour, and certainly a minimum of 12 miles an hour in the transportation of live stock is not unfair to ask of the roads.

Mr. KENNEDY. But a speed of 16 miles on the average means a much higher rate of speed than 30 miles an hour midway between stations.

Mr. STEVENS. And on a single-track road, decidedly.

Mr. KENNEDY. Take a maximum point.

Doctor STILLMAN. I am familiar with the point you are raising. I left that to the stockmen, who are familiar with that phase of the subject.

Mr. KENNEDY. They can not run 16 miles an hour on the average unless they run more than 30 miles midway between stations. You must allow for stops, you know.

Doctor STILLMAN. Would you think that allowing 50 per cent of the time on sidetracks would be a liberal percentage?

Mr. KENNEDY. No. For miles a train does not acquire a speed of 16 miles an hour, and then it must increase its speed and run away beyond 16 miles an hour, perhaps beyond 30 miles an hour, at the highest speed, in order to maintain an average of 16 miles.

Mr. KNOWLAND. That would be different on single and double tracks, would it not?

Doctor STILLMAN. Yes.

Mr. KNOWLAND. On the long hauls in the West they are mostly single tracks, are they not?

Doctor STILLMAN. Yes.

The CHAIRMAN. I do not want to interrupt you, Doctor, but on these practical questions I think these other gentlemen could answer. Time is running.

Doctor STILLMAN. Yes, Mr. Chairman; I am presenting the subject as we understand it, after careful study for several years; and as to statements of facts, we will ask you to extract them from the cattlemen and the representatives of the Department of Agriculture, who can present them perhaps more satisfactorily and circumstantially than we can do, because our defense would be to verify everything and make it satisfactorily conclusive to ourselves.

STATEMENT OF MR. F. W. GOODING, OF SHOSHONE, IDAHO, PRESIDENT OF THE NATIONAL WOOL GROWERS' ASSOCIATION.

Mr. GOODING. Mr. Chairman and gentlemen, I am going to say but little on this subject this morning, but I am going to ask you to accept the resolutions that have been drawn up by the National Wool Growers' Association and also by the American National Live Stock Association at conventions held, one at Ogden City, Utah, and the other at Denver, Colo., this year.

I want to say to you that the live stock association and the live stock men at the present time throughout the western country, where there has been a large amount of stock transported to eastern markets, are unanimous in asking that we get a minimum speed bill passed here for the benefit of those shippers. I want to say to you that there are millions of dollars lost annually by the methods pursued by railroads in shipping their live stock to destination. The shrinkages are great. Two pounds, 3 or 4 pounds, lost in a sheep in transporting that sheep from the West to market, and perhaps 10 or 20 or 30 or 40 pounds on a steer when transported to market, means a great deal of money if you figure it up in the aggregate. It runs into the millions.

Not only that, but, as stated by Doctor Stillman, it affects the meat, its quality and healthfulness. I am living in Idaho and shipping over the Oregon Short Line and the Union Pacific Railroad, and those roads are practically under one management. I can speak more particularly of that one than of any others. I have ridden on a stock train many a time myself, and I know whereof I speak when I say we used to come from our country down to Chicago in eight days, whereas the best they can do at the present time is ten or twelve

days. There is something wrong, evidently. We used to make better time than we do now. In the movement of stock from our western country down to the yards in Omaha the railroads have no competition, but at Omaha, where there is competition, our stock in transported from that point to Chicago at the rate of 20 miles, and yet on the Union Pacific we drag on at 8 or 10 miles an hour.

Mr. KNOWLAND. Are they double tracks from Omaha eastward?

Mr. GOODING. No, sir. The Rock Island and Burlington and Milwaukee and other roads are single-track roads; yet they all practically make about the same time.

Mr. STAFFORD. To what do you ascribe the lengthening of time that you speak of?

Mr. GOODING. We will have to admit that the railroads have more business West, but we do not like the proposition of the Union Pacific road running fruit trains by a live-stock train. Why they do it I do not know; but they do do it.

Mr. STEVENS. Now, I have before me the last report of the Solicitor of the Department of Agriculture, in which he gives the details of the prosecution of violations of the law. You are complaining of the Union Pacific, which is not giving you good service?

Mr. GOODING. Yes. That is the road I ship my stuff over.

Mr. STEVENS. This report says that there are 12 prosecutions against them. You claim that from Omaha east the conditions are better?

Mr. GOODING. Yes.

Mr. STEVENS. The Milwaukee and St. Paul is one of the lines that compete?

Mr. GOODING. Yes.

Mr. STEVENS. They have three times as many prosecutions as the Union Pacific. The Chicago and Northwestern is another?

Mr. GOODING. Yes.

Mr. STEVENS. They have 30 or 40. The Rock Island and Pacific is another?

Mr. GOODING. Do they come from Omaha to Chicago? Some of those roads run from there up. Those prosecutions may be on the lines farther out.

Mr. STEVENS. The Milwaukee and St. Paul does not reach to the coast. The Rock Island and Pacific, and the Missouri and Pacific, and the Milwaukee and St. Paul—all those run between Omaha and Chicago?

Mr. GOODING. Yes, sir.

Mr. STEVENS. All those roads have more prosecutions against them than the Union Pacific. How do you explain that?

Mr. GOODING. So far as my observation is concerned, I get much better service on those roads than I do on the Union Pacific.

Mr. ADAMSON. Don't you think the complaints against them have originated on parts of their lines where they do not have competition?

Mr. GOODING. That may be.

Mr. STAFFORD. In different parts of their lines, say out in the Dakotas, they have the same character of service that they have in Wisconsin and Illinois.

Mr. GOODING. Where there is competition there is better service. But out in our country, where they can pick up the stock and have a

"inch" on it, they use it as they please. My particular point is, when the railroads can run fruit trains so fast; why can they not run the stock trains equally fast? Can there be more loss in the fruit in a train than there is in the live stock? I say no. There must be a greater loss in the case of the stock, naturally. It affects the meat that the whole country has got to consume.

Mr. Mann knows that I have been before this committee before, and that I have made statements here; and I want to say now, gentlemen, that I consider this one of the most important bills that is to-day before Congress for the benefit of the stock growers and the people at large in this country.

The CHAIRMAN. Suppose the passage of this bill should increase the rate on live stock from 25 to 33 per cent, would you then think it so important? [Laughter.]

Mr. GOODING. I have offered to pay the railroad company an increased charge if they would give me a guaranteed run on the railroad. I would be willing to do that, because I realize the fact that I would be ahead. I am talking about this matter, gentlemen, from the financial point of view. I offered to pay the Oregon Short Line \$50 a car more.

The CHAIRMAN. Are you willing to answer that question as to whether the live stock interests would be willing to pay 25 per cent more in freight in order to have the transportation of their live stock expedited?

Mr. GOODING. I would not want to answer that question for the whole of the live-stock people, because many of them might object, and many of them feel that they are paying more to-day than they should; but I would be willing to do it myself, because I realize that I can more than make up the difference from the fact that I would get a better price for my stock.

The CHAIRMAN. You think it would be advantageous to have the rate of live stock increased and the time of transportation decreased proportionately?

Mr. GOODING. I think the shippers would make money by that.

The CHAIRMAN. Are you in favor of that proposition yourself?

Mr. GOODING. It all depends on how much the increase would be. [Laughter.] I do not want to give the railroads all I make. I want a little left.

The CHAIRMAN. Say an increase from 25 per cent to 33.

Mr. GOODING. Well, an increase of 25 per cent would be fifty or fifty-two or fifty-three dollars. I have offered to do that; I have offered to give them \$50 a car more to get my stock down to market.

The CHAIRMAN. Was that on particular shipments?

Mr. GOODING. It was my own shipments. I was trying to get something for my own special benefit.

The CHAIRMAN. I say, was that a particular shipment?

Mr. GOODING. No; I am willing to do it at all times.

The CHAIRMAN. I am not trying to commit your association, because I have individual views on that subject, and perhaps the association has not spoken on it.

Mr. KENNEDY. Don't you think you have got this whole problem wrong? Would it not be economy to limit the distance that live stock can be shipped on the hoof? It is essentially cruel and bad economy to carry live stock for ten days on the trains, even under the best conditions.

Mr. GOODING. It would be if we could get the market for it. But who is going to supply the market? The grower is not able to supply the market.

Mr. KENNEDY. The live-stock associations are great associations in this country.

Mr. GOODING. They are not large enough for that. Each man is striking for individual business. As an organization they are strong. But they could not go into the business. It takes millions and millions of dollars. You will realize that if the packers in the great centers are spending millions on their packing plants it would be impossible for the stock raisers individually to go into that kind of a proposition.

Mr. KENNEDY. It would not require a great deal of capital to slaughter the cattle out in your country and send them to the East in refrigerator cars.

Mr. GOODING. There is no one that has had sufficient capital and has been willing to try it, and I would not be willing to undertake to buck the packers of Kansas City and Chicago on the hoof. [Laughter.]

Mr. KENNEDY. If the facts are as you contend, it would be a healthy condition that the public, perhaps, ought to insist upon. Has there ever been a discussion by your association of the matter of correcting the cruelty to animals in this way?

Mr. GOODING. Our association discussed the matter from a financial point of view. Of course, the more humanely they handle their stock the better prices they receive and the more money they realize from that stock. That is natural.

Mr. STEVENS. Do you know the comparative rates of the fruit you complain about and the live-stock rates? Have you investigated that?

Mr. GOODING. No, sir; I have not investigated, but I know it is done, and I have seen them on the railroads.

Mr. STEVENS. You have not investigated?

Mr. GOODING. No.

Mr. TOWNSEND. Has not the commission decided, when these stock rates come up, that a certain amount is reasonable?

Mr. GOODING. Yes, sir.

Mr. TOWNSEND. You are simply asking certain restrictions to be made which can be used and taken into consideration when the rate is fixed?

Mr. GOODING. Yes, sir.

Mr. WANGER. Speaking of Chicago, do you go through Omaha?

Mr. GOODING. Yes, sir.

Mr. WANGER. How far is it from your loading point to Omaha?

Mr. GOODING. About 1,300 miles.

Mr. WANGER. How long does it take?

Mr. GOODING. I have not that just figured out, but we consume all the time we are on the road with the exception of about twenty-two or twenty-three hours in going from Omaha to Chicago. That is all it takes us. It is about 500 miles, and it takes us that time; sometimes less, and sometimes more. I have gone down there in nineteen hours.

Mr. WANGER. Then it would take nine more days to make the 1,500 miles?

Mr. GOODING. Yes. You see it would take longer if you fed the stock. Now, as to the question that was asked of Doctor Stillman, if the present law was not adequate to force this stock to market, it does not make any difference as to the thirty-five hours what your speed is. It does not seem to make any difference to the railroad whether they make 200 miles in thirty-six hours or whether they make it in twenty-eight hours. It does not help us get our stuff to market at all.

The CHAIRMAN. You do not ask it?

Mr. GOODING. We nearly all of us ask it.

The CHAIRMAN. Why?

Mr. GOODING. Because we want to get to a certain place to feed. They may unload us at Rawlins, which is not as good a place to feed as Laramie, 120 or 130 miles farther east.

The CHAIRMAN. Would you be satisfied with a less cost if it would eventually get you to a farther distance?

Mr. GOODING. I do not want to complain, but I want to say that they do not consider your live stock as a train of live stock alone. They just peck along in that thirty-six hours, and if they can not see how they can unload you at Laramie, they say, "You can not unload, and you must unload at Rawlins." The shipper has nothing to say about it. The railroads tell him what he must do, and he must do it.

The CHAIRMAN. Do the railroads now present you a printed form to sign?

Mr. GOODING. No, sir. They will give it to you when you ask for it and want to use it. There is no one of our men that I know of where they have insisted upon our signing. I usually tell my men to go and sign, because I want to give them the time necessary to get to the best place to feed and water.

The CHAIRMAN. Is the time now longer between your place and Chicago than it was before the limit was extended to thirty-six hours?

Mr. GOODING. It has not lessened any, Mr. Mann. I do not know that it is much different. Ten or twelve years ago, along in there, I was shipping live stock at that time, and of course the roads were not so congested with business, and we used to get over the road in about two days' less time on the average than we do now. They used to land the train from the West about forty hours earlier than now. That has been my experience.

I would like to offer these resolutions, to be printed in the record.

The CHAIRMAN. Give them to the stenographer.

(Following are the resolutions referred to:)

Resolutions adopted by the National Woolgrowers' Association at its forty-sixth annual convention, Ogden City, Utah, January 8, 1910.

RAILROAD RATES AND TRANSPORTATION.

Because of the serious losses sustained by those engaged in the live-stock industry in the transportation of stock to market, due to the slow movement of railroad trains and long and unnecessary delays, which we attribute to the tonnage system in vogue, which fact we have repeatedly called to the attention of the railroad officials without obtaining complete relief, and inasmuch as this condition obtains on practically every railroad system in the United States, we deem it a proper subject for the consideration of the National Woolgrowers' Association.

We recommend that this association send a committee to Washington which shall endeavor to have a speed minimum clause added to the present federal law (known as the "thirty-six-hour limit") which governs the shipment of live stock and provides for their humane treatment.

We recommend that our committee be instructed to cooperate with the American Humane Association in securing the enactment of the "Sixteen-mile speed limit" legislation recommended by the association.

Resolutions adopted by the American National Live Stock Association, Denver, Colo., January 23, 1908.

Be it resolved by the American National Live Stock Association in annual convention assembled in Denver, Colo., January 21, 22, 23, 1908, That the Congress of the United States be, and the same is hereby, memorialized to enact a law to provide for a minimum speed limit for the transportation of live stock which minimum speed limit for stock trains shall not be less than 20 miles per hour from the place of loading to the first division point of the road and between division points and the place of destination, with such exceptions as should be made over mountain divisions and under other exceptional cases, as to make the same reasonable, as circumstances may require; and

That the time limit for stoppage of live stock at division points shall not exceed a reasonable time. That the law fix appropriate penalties against railroad companies for failing to observe the said speed limit in the transportation of live stock, for failure to observe such rules as may be prescribed by the commission, subject to exceptions as are fair and reasonable for accidents and causes beyond the reasonable foresight and control of railroad companies.

Provided, That the burden shall be on the railroad company to prove the facts relative to any accident preventing the observance of said mentioned speed limit; and be it further

Resolved, That the Interstate Commerce Commission be vested with the power to prescribe the speed limit so as to make it applicable to the various circumstances and conditions of transportation.

Resolutions adopted by the American National Live Stock Association, Denver, Colo., January 13, 1910.

Resolved by the American National Live Stock Association in convention assembled at Denver, Colo., January 13, 1910, That in order to secure better service from the railroads in the transportation of live stock, we recommend to Congress the enactment of a law to give to the Interstate Commerce Commission the power to prescribe a minimum speed limit for stock trains to suit the conditions in different localities.

MR. STEVENS. In connection with your statement, Mr. Gooding, to the effect that you got better service east of Omaha than west, the record of the Solicitor of the Department of Agriculture shows that on the Union Pacific last year in the district of Nebraska and Utah there were 11 prosecutions for the violation of the twenty-eight-hour law, and that in the districts between Omaha and Chicago, where there has been competition, in those districts alone there were 98 prosecutions, showing that there were nine times as many violations of the law east of Omaha, where there was competition, than there were west of Omaha, where there was no competition. How do you explain that?

MR. GOODING. I can not explain that. I am speaking merely of my own experience. I say I get better service east of Omaha than west of Omaha. That is my own experience. The reason why I could not talk on this subject fully is that I have not any detailed information, but if necessary I think we could get up a bunch of statistics that would enlighten you people a good deal. Mr. Mann knows that this subject has been thrashed out ever since 1906, and unless we get something on this line, I want to say to you, gentlemen, that you are going to have this thing before you every winter, be-

cause our men are losing too much money. It is of vital interest to the stock-raising industry of the country.

The CHAIRMAN. Mr. Gooding, we do not take that as a threat. We are so pleased with the prospect of having you here every winter that we do not feel alarmed. [Laughter.]

Mr. STAFFORD. You say that your stock cars are a composite or component part of a freight train?

Mr. GOODING. We think we have a train when we have 20 or 30 cars, but 16 or 20 more cars are added to it, and we then become only part of a freight train.

Mr. STAFFORD. Is the train of such a character that it could be likened to the fast fruit train that you say takes precedence?

Mr. GOODING. The 25 or 30 cars make a pretty good train. Every railroad handles its cars on the tonnage system, and the more cars they can handle in one train with one engine the better they are satisfied. It does not make much difference as to the time. They have to haul a less number of cars under a time limit, but if you pass such a bill as we are asking for, I will say to you that 35 or 40 cars are about all the Union Pacific can haul in a train.

Mr. STAFFORD. The large majority of the freight of this train is stock, and the mixed freight is only a part?

Mr. GOODING. Yes, sir.

Mr. KNOWLAND. According to your view the chief cause of delay is the transportation of fruit?

Mr. GOODING. No. I would not say that. It just so happens that the largest shipments from the western country of live stock come about the time of the largest shipments of fruit, in July and August.

Mr. KNOWLAND. Of course fruit is perishable, and it is just as important to the health of the people that the fruit should be brought into market quickly as the cattle?

Mr. GOODING. Yes; but why should fruit take the precedence? That is what we object to.

The CHAIRMAN. Well, gentlemen, we are very much obliged to you. Judge Richardson has some ladies who would like to be heard, I understand.

STATEMENT OF MRS. LAWRENCE JOHNSON, OF LUSK, WYO.

Mrs. JOHNSON. Mr. Chairman and gentlemen, there is one thing I would say, and that is that in shipping freight over the northwestern roads, both cattle and sheep, we have found out that a threat to the Burlington would often put us in Omaha a great many hours earlier than we would have got in if we had not made the threat. Our ranch is situated halfway between the Northwestern and the Burlington, and many times we have used that argument to induce them to get our live stock into the market a little earlier.

The CHAIRMAN. What kind of a threat do you mean?

Mrs. JOHNSON. By simply telling them that we will not ship our stock over their road unless they get it in a reasonable time. That is all I have to say. [Laughter.]

The CHAIRMAN. We thank you.

Mrs. JOHNSON. I thank you very much.

The CHAIRMAN. Without objection, we will proceed with this hearing this afternoon at 2 o'clock.

Mr. S. P. NEALE. Mr. Chairman, are many more to be heard in favor of the bill?

Mr. WANGER. Two more items.

Mr. NEALE. There are a number of railroad witnesses here. Will they be accorded a hearing this afternoon?

The CHAIRMAN. I presume so.

Doctor STILLMAN. Mr. Chairman, I would simply like to say that Mr. Guy Richardson, among others, has appeared in behalf of the bill—Mr. Guy Richardson, of the Massachusetts Society for the Prevention of Cruelty to Animals.

The CHAIRMAN. We will not put in the names of people unless they are heard.

Doctor STILLMAN. I thought it was customary to have them put in.

The CHAIRMAN. It is not the custom. We would have no objection in this case, but there are so many people who might avail of that precedent that we do not like to inaugurate it. You had better have them here this afternoon so that they can be heard.

(Thereupon, at 11.40 o'clock a. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The committee met at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. You may proceed, gentlemen.

STATEMENT OF PETER G. JOHNSTON, REPRESENTING THE NATIONAL WOOL GROWERS' ASSOCIATION.

Mr. JOHNSTON. My name is Peter G. Johnston, of Blackford, Idaho, representing the National Wool Growers' Association. I have addressed the committee twice before on the same subject in regard to which I now appear before you. This is the third endeavor to have enacted into law some definite speed minimum that shall govern transportation of live stock.

It will be remembered that in 1906 a bill was introduced which contemplated this, but the speed minimum clause was eliminated. The passage of the amendment to the law governing humane treatment of live stock which was approved June 29, 1906, did not prove satisfactory. The railroads promised that if the time was extended from twenty-eight to thirty-six hours, live stock would be by them hauled at a reasonable rate of speed, and that they would obey the law as it then stood upon the statute books of the United States.

Time and experience, however, have proven the failure of their promises to keep within and live up to the requirements of the law, as is substantiated by the numerous prosecutions entered against the railroads by the Department of Agriculture.

I desire to state my personal experience, as a shipper, in two instances: In October, 1907, about the 1st, if I remember correctly, I loaded 20 cars of sheep at St. Anthony, Idaho, en route to Chicago. I did not receive the power to move the cars until late in the day, although it had been promised me early in the morning. After loading, we started out at night, causing the loss of about 30 sheep, because of the fact that in the nighttime and when it is dark it is almost impossible to keep the sheep on their feet or to see those that

are down. You will understand that when sheep first start out on a railroad they are unaccustomed to the motion of the train; but if it is daylight, during a distance of a hundred miles or so they can be sufficiently trained so that if they are not overcrowded in the car they will retain their footing when they desire so to do and will occasionally rest, rising up and allowing the others to rest. But in starting in the nighttime a loss is almost sure to occur, if they are loaded even reasonably—I mean with reference to their being crowded—because assistance can not be given them, and in their fright and terror they crowd to one end or the other of the car; this is sometimes occasioned, too, by the jerking of the train.

Because of delay, we did not reach Montpelier until 2 o'clock the next day, thus consuming nineteen hours in a journey of 186 miles. Another delay of three hours occurred in unloading at Montpelier, which delay made it 5 o'clock before the sheep were unloaded. Then, because of darkness, we were obliged to keep them in the corrals all night. Twenty-two hours were consumed in going 186 miles, or rather twenty-two hours were consumed before the sheep could be unloaded, the average being $8\frac{1}{2}$ miles per hour for the first part of the run.

We loaded up the next day and went a distance of 164 miles in twenty-six hours; the average per hour was $6\frac{1}{2}$ miles, and we were unloaded at Rawlins, despite our protests to the contrary and in spite of the fact that there was ample time, with this release being signed, that would have permitted us to have reached Laramie, Wyo. Rawlins was unfitted then and is now for the feeding of the lambs, of which the 4,000 sheep consisted.

Mr. STEVENS. Who denied your request?

Mr. JOHNSTON. The railroad.

Mr. STEVENS. The railroad can not do it; some official of the railroad denied your request.

Mr. JOHNSTON. Well, I am unable to remember just what his title would be.

Mr. STEVENS. Whom would you address, the conductor?

Mr. JOHNSTON. The yardmaster is one of the parties that I saw, and he said, "You must unload." I told him that we had ample time, by signing a release, to reach Rawlins. "It does not make any difference, sir; my orders are you shall be unloaded," and we were unloaded. I am not positive as to the official title of the officer that I saw, but I believe it was the yardmaster.

Mr. STAFFORD. What was the occasion of the slow speed that you suffered in the case you instance in this shipment?

Mr. JOHNSTON. The train could not pull the load that was attached to it; that was one of the reasons. Another reason was that other freight had a right of way over us.

Mr. STAFFORD. How much of the time that you stated was engaged in travel, and how much on sidings, in that twenty-two hours' run?

Mr. JOHNSTON. My answer would be approximate. According to the best of my recollection, I would say that we were about seven hours on sidings, waiting.

Mr. STAFFORD. Was that at terminals, or in the interior?

Mr. JOHNSTON. No; at terminal and other points.

Mr. STEVENS. What was the character of the freight that went by you while you were on sidings?

Mr. JOHNSTON. Manifest fruit, fast California fruit.

Mr. STAFFORD. They were through trains that passed you?

Mr. JOHNSTON. I do not know whether they were any more necessarily through trains than my live stock.

Mr. STAFFORD. Leaving out the question of necessity, were they through trains or not?

Mr. JOHNSTON. I am not aware as to their character. I know they passed us.

Mr. STAFFORD. In the train of which your stock comprised a part, was it a through train or was it composed in part of some local freight?

The CHAIRMAN. You do not carry live stock in trains with local freight cars.

Mr. STAFFORD. I am trying to find out whether the train was engaged in picking up cars en route, or whether it was a through train.

Mr. JOHNSTON. It was not picking up cars at sidings. As to the balance of the freight on the train, I remember particularly that there was a car of rails on the train, to which I make particular reference, and there was other dead freight that it seemed to me could have very well waited rather than to permit the stock to perish from hunger and thirst, as they had to do in this particular instance. The unloading of them at Rawlins did not in any particular live up to the purpose of the law now governing shipment as regards the humanity pertaining to it, because the water there was turned out in troughs. Those lambs had never seen a trough before, and I am willing to make an assertion on my oath that not 200 of them attempted to touch it. They were fed dry hay, but they stood huddled together and did not touch the hay. As a matter of fact, they never saw it before or anything like unto it. At no time is it humane to unload lambs at that station. I tried to make that apparent to the railroad official, but he had his orders, and had to obey them.

The CHAIRMAN. Suppose you had run on to Laramie. How about drink and feed for these lambs there?

Mr. JOHNSTON. I have some data on that that I will read to you.

Mr. STAFFORD. In this shipment of twenty-two hours did that train—and I assume you accompanied it——

Mr. JOHNSTON. I did.

Mr. STAFFORD. Did that train gather up any cattle cars en route or any other character of cars?

Mr. JOHNSTON. I merely give this as a recollection: In starting from Montpelier the train consisted of about 58 cars. The engine could barely pull it up to Granger. After we got to Granger more freight was put on, and after reaching Green River more freight still was put on, until it barely crept along. At no time, in my recollection, where there was the slightest uphill grade was it not so that I could easily have gotten off and partly walked and partly run alongside the train and taken the train again, without any danger whatever. It was moving at the rate of 4 or 5 miles and even as slow as 3 miles per hour.

We then loaded the sheep, took them to Laramie, a distance of 117 miles, and unloaded them there. Laramie is a place splendidly fitted for the care of sheep. A beautiful, clear stream of water passes the stock yards, with a solid pebble bottom, and shallow, into which the sheep can wade and drink to their hearts' content. Pasturage of

western grasses such as these lambs were used to is available, and that feeding point is in every way eminently fitted for the care of this kind of live stock.

But the law as it now stands is defective in the fact that it is not our option to reach it. The matter is absolutely in the hands of the railroads, and they dictate to us whether or no we shall reach it. No certainty whatever is given to the shipper and the producer as to whether or not he shall reach any given point at any certain time in the day or night, for that matter.

I cite these cases to show the very severe loss of flesh and the torture that these sheep endured before reaching a satisfactory place to feed them, because of the railroad's violation of the spirit and intent of the law.

On October 2, 1903, I agreed with the railroad company at St. Anthony and received a dispatch to the effect that the power and cars would be there at 7.30 on the morning of the 3d, to load our sheep, a shipment consisting of 20 cars. The power reached there about 8 o'clock, but the crew had worked sixteen hours, and consequently had to tie up for rest. Let me explain. The crew had then worked sixteen hours, and the railroad must certainly have been cognizant of that fact in sending them up there, and they knew there was no other power with which I could load those sheep. They also knew, if they knew anything at all, about what circumstances these sheep were in at St. Anthony, surrounded by an agricultural district for miles and miles, where it was impossible for me to turn them out upon the ranges or obtain feed for the sheep. So that the necessary tie-up of eight hours had to occur, and the dispatcher knew that just as well after it did occur as prior to the occurrence. We could not turn the sheep out to feed, as I have already stated, and we had to wait until 4 o'clock; then loaded the sheep and finished in the dark.

On this trip, while trying to be governed by the experience of the past and loading lighter, 270 to the car, we lost 50 sheep between there and Pocatello, a distance of 87 miles. And such losses will always occur, as I said before, even if they are reasonably loaded. At the first jolt and jar of the cars the animals are so terrified that they huddle together, either in this corner or in that, with the result, if you can not see them so as to be able to help them and assist them to regain their footing, they perish; and as fine meat as was ever shipped out of the Rocky Mountains was shipped down in that train of sheep.

I have never had anything in my shipping experience that so annoyed my feelings; to think that a law existed in these United States—or rather for the lack of the existence of a law to govern in some degree the humane movement of live stock there was an utter waste from which no one derived any benefit whatever.

The CHAIRMAN. Does that contribute to the high price of live stock?

Mr. JOHNSTON. Well, as the ratio is of 50 to 4,000, so did it contribute, Mr. Chairman, to the high price of lambs.

On our arrival at Pocatello we had two bad-order cars. We had to transfer one by going to the stock yard and loading the sheep into another car. The other the railroad employees patched up as best they could.

I wish to say that both of those cars were in such a condition that the most ordinary mechanic acquainted with the movement of railroad

trains could see that they were not fit to have been included in such a shipment. I know that to be a fact, because I myself personally examined the car at St. Anthony prior to its starting, and called it to the attention of the agent. He said, "I can not do anything about it. We have no other car here. I would be very glad to replace it, but these are all the cars we have on hand." I cite this to show the carelessness of the railroad in this matter. An ordinary mechanic would have discovered in a moment by careful examination that that car would not hold; that the bolts were in such a condition that they were bound to pull out under a pressure of 30 or 40 cars.

We did not get away from Pocatello until 4 a. m., and we did not reach Montpelier until 1 p. m. Another delay occurred in unloading and thus deprived the sheep for another night of necessary food and water. We finished unloading at 7.30, and the sheep had to lay there all night. They might just as well have unloaded along the line, so far as the benefits of unloading were concerned. They would have gotten just as much feed and almost as much rest by going on in transit in an endeavor to reach another point that would be just as suitable, but the law intervenes. The time which governs the producer, but does not govern the common carrier—

The CHAIRMAN. I do not quite understand how the law intervenes there.

Mr. JOHNSTON. The necessity for unloading.

The CHAIRMAN. I know; but on the statement you made, what was the time from that last place?

Mr. JOHNSTON. I see what is in your mind, and I will explain. I did not wish to unload at Green River or Rawlins. They are very much worse than Montpelier. So it was a choice between two evils. Knowing it was impossible to reach Laramie, I unloaded at Montpelier and took that choice. What we need more than anything else now is some certainty with reference to our movements. If it is so that the railroad is obligated to move our stock at a reasonable speed, and that is definitely asserted in the law, we can calculate with some degree of certainty what can be done. We can also load up and depend upon arriving at some place.

These two cases are only two out of hundreds. The loss is sustained in the shrinkage of our live stock, from which no one is the beneficiary. I wish to say that the West suffers a loss of millions in this manner. When it comes to a principle of conservation, here is a grand opportunity to conserve that which we already have, and not only that, but for years it has been apparent to me—and I have been in this business twenty-five years, and I know a little about it; and I have slaughtered those sheep out West and shipped out of the identical flock that I have shipped to the East, and I know this—that after such torturous treatment as this the meat is brought into the eastern market and slaughtered, and the sale of it in that condition is an absolute injustice to the people that have to consume it. It is an injustice to their health. The meat is fevered. As you very well know, thirst produces that effect, and famine and hunger naturally emaciate the animals, with the result that the meat must be offered to the millions of people on the east side of the Mississippi River that consume it in a condition that is certainly detrimental as against what it would be if it were but shipped down in a condition such as it is

when we start with it, or as nearly so as possible. I rather think maybe the people that eat this meat will awaken to this question some time or other and have a little something to say about it.

You can imagine a lamb weighing, when he leaves the mountains, 80 pounds. We weigh them out there. We know what they shrink. Ordinarily they shrink about 7 pounds. In this shipment I weighed these sheep at Laramie, and because of the suffering that they had undergone from thirst they had shrunk an additional 3 pounds.

I call that point to your attention because it is worthy of consideration. It is true we have the financial side to consider. It is a fact that I lost a half dollar a head on those sheep, which is \$2,000, in itself a handsome profit for a man with reasonable ideas of living.

MR. STAFFORD. Do those sheep make up anything in their shrinkage after being fed at the terminals?

MR. JOHNSTON. Oh, no; they are not used to the feed, and they do not care about the feed. They continue to lose except they are taken out in the green pasture. But they get mighty little chance to make up. They are sold and slaughtered, and in the condition that I refer to. I want to impress, if possible, that side of the question upon the minds of the members of this committee.

MR. KNOWLAND. Would there not be some loss under the best conditions?

MR. JOHNSTON. Yes, sir; but not very much. If I knew that I could get my sheep to move 16 miles an hour, I can provide pretty well for them all along the line. I can get where there is nice food and mountain water, and can take them down in pretty good shape, if I knew I could go a reasonable distance in a reasonable length of time.

That is the defect of the law. To the shipper the law is worthless. The extension of time has largely been absorbed in setting us on sidings from the time that is done.

MR. TOWNSEND. Is that a general condition, or does it apply to some special road?

MR. JOHNSTON. It has been my luck both times.

MR. TOWNSEND. I understood some gentleman to say that, as a rule, the railroads are trying to comply with the law. If they did comply with the spirit of existing law, there would be no difficulty, would there?

MR. JOHNSTON. Yes, sir; because who is to determine the spirit of existing law? This is their interpretation of it. We have had experience with them on that.

MR. TOWNSEND. With your interpretation of the law, then?

MR. JOHNSTON. I would be just as unreasonable the other way as they would be their way. What is there unfair in stating a certain time, at least, which is reasonable that they shall reach there?

MR. TOWNSEND. I am trying to analyze from the evidence that has been put in now. Some gentlemen have taken the floor and stated that certain railroads are not obeying the law, and cases were numerous, that hundreds of suits were pending. Now, unless you increase the penalty, why will not they violate any other law which you can put on the statute books, if these railroads are not regarding the law; if they are willing to submit to fine, what certainty have you that if we make this other change which you ask that they will observe that?

MR. JOHNSTON. Well, I have always looked upon the law as a pretty supreme matter, and if I was running the matter they would obey it; or they would pay the fine until they got good and well tired of it.

MR. TOWNSEND. But they do pay the fine.

MR. JOHNSTON. Yes, sir; but it is a minimum proposition all the time.

You must understand that this fruit that passes has an organization in California behind it, and every movement of that fruit car, from the time it leaves the producer until it reaches the consumer, has that organization behind it, and it is cognizant of everything that takes place; their attorney knows all about it. Without any deflection or discount, the railroad pays that damage bill and does it in a hurry. That I know to be the fact.

MR. KNOWLAND. Have you not a pretty good organization yourself—the cattlemen?

MR. JOHNSTON. No, sir; not on this question.

MR. KNOWLAND. It would be well to get one, would it not?

MR. JOHNSTON. Yes. But we thought we would come here, to the people we sent here to make our laws, in an effort to get justice.

MR. TOWNSEND. I suppose we can tell more about that organization when these investigations are through with.

MR. JOHNSTON. I think it likely; yes.

MR. STEVENS. What kind of trains carry your sheep cars? Mixed trains; that is, composed of general freight—flat cars, box cars, and cattle cars—all mixed up together?

MR. JOHNSTON. Well, sometimes; yes, sir.

MR. STEVENS. Or is it entirely a sheep train or a cattle train?

MR. JOHNSTON. No; it would not be with 20 cars. They endeavor to pull about 60 cars. You see, there would be 40 other cars of freight.

MR. STEVENS. What is the freight in those other 40 cars, usually?

MR. JOHNSTON. I went along with rails, about which I told you a little while ago, and I think about everything else. I could not say as to any given class of freight.

MR. STEVENS. It is a sort of mixed train, with all classes of freight that is gathered?

MR. JOHNSTON. Yes, sir.

MR. STEVENS. What division is St. Anthony on?

MR. JOHNSTON. It is a branch of the Oregon Short Line.

MR. STEVENS. Where does it reach the line of the Oregon Short Line?

MR. JOHNSTON. At Idaho Falls.

MR. STEVENS. When your 20 cars were picked up at St. Anthony, how many other cars were on that same train?

MR. JOHNSTON. Not any. They went down alone with them to Idaho Falls.

MR. STEVENS. And started alone down to the main line at Idaho Falls?

MR. JOHNSTON. Yes, sir.

MR. STEVENS. Then they were put in another train, or did your same train run through?

MR. JOHNSTON. More freight was sent down to Pocatello with us, but not so much more but what they could have pulled it, and did

pull it along very reasonably. It was these bad-order cars that delayed us.

Mr. STEVENS. Do you complain about the rate of speed from St. Anthony down to Idaho Falls?

Mr. JOHNSTON. Yes, sir; I complain about the inexpeditious manner in which things are handled.

Mr. STEVENS. Let us get exactly what the facts were. Do you complain that the train did not run fast enough from St. Anthony down to Idaho Falls?

Mr. JOHNSTON. Well, if I make that answer in the abstract——

Mr. STEVENS. You knew how fast they ran?

Mr. JOHNSTON. I should say the cars, when they were going, went along probably 18 or 20 miles an hour.

Mr. STEVENS. That was fairly reasonable?

Mr. JOHNSTON. Yes, sir; it would have been a very good rate.

Mr. STEVENS. Then from Idaho Falls down to Pocatello did that train move fast enough, or was it delayed?

Mr. JOHNSTON. It was delayed because of its condition, and I think we were put on some sidings. I think we passed some freight, but we had these hot boxes.

Mr. STEVENS. The equipment was in bad condition?

Mr. JOHNSTON. Those two cars were. The others were splendid, magnificent cars from the Northwestern road.

Mr. STEVENS. About how much of a train was it that went from Idaho Falls to Pocatello?

Mr. JOHNSTON. I think, perhaps, 10 cars in addition to those which we had.

Mr. STEVENS. What kind of freight was that?

Mr. JOHNSTON. I believe ordinary freight. It was a short distance of 50 miles; that would make no difference.

Mr. STEVENS. The point I am trying to get at is that your sheep and cattle cars did not move in a train by themselves, did they? They were mixed up with other freight generally?

Mr. JOHNSTON. Yes, sir.

Mr. STEVENS. That is the point.

Mr. JOHNSTON. I will answer that. I think I see what you mean, and I will be very glad to inform you, if I can. We endeavor as much as possible to start out by cumulative shipments amongst ourselves of that which will constitute a train.

Mr. STEVENS. That is what I want to get at.

Mr. JOHNSTON. And we are successful in most instances on the Oregon Short Line. Their general freight and live-stock agents have recognized the wisdom of this, and they have endeavored to cooperate with us, and when we are able to gather a train of 30 or 40 cars they give us good service as far as they go.

Mr. STEVENS. That is just what I want to get at.

Mr. JOHNSTON. But in striking the Union Pacific there was not as much tonnage as they desired to haul, and usually some fruit or other freight of a goodly class would be added to such a train consisting of 30 or 40 cars, as the case may be. If the fruit was not at hand, it is a question of tonnage, anyway. That is the case in the entire western railroad world. I will cite a definite instance to prove that which I am attempting to explain.

In traveling on the railroads, as I have been doing for twenty-five years, I have learned something about it. I understand the dispatching of a train, and I understand by the dispatcher's chart the amount of freight, the number of cars he has to take care of, from and to, and where this or that train may be. I went to the dispatcher in Laramie, who was a very nice, obliging young man, and asked him to let me look at the chart, which he did. I said, "Now, I am made up with this train—I believe the number was 36 cars; let me out over the hill." It was a distance of about 30 miles over considerable of a hill, called "Sherman Hill," and I asked him to let me out with this number of cars. He said, "I am sorry, but I can not do it." I asked him why, and he said, "Because I must put so many hundred tons on that engine." I believe he said thirteen hundred tons. I said, "You know, just as well as I do, that that engine can not any more creep up that hill with thirteen hundred tons on it; even a double header would be liable to be stalled." He said, "This is a tonnage shipment; those sheep do not appear sheep to me; it is a question of tons, whether sheep or rails." I said, "Don't you realize, as an American citizen, it is pretty inhumane?" He said, "It is; that is true, but nevertheless that is just exactly what I have to do."

Mr. STEVENS. He could not help himself?

Mr. JOHNSTON. No; but the system is to blame, and that is why I cite the instance.

Mr. STEVENS. Let us see if we can get some more facts about that. Do you know what classes of freight went in that train—rails and other merchandise?

Mr. JOHNSTON. No; I think not.

Mr. STEVENS. Any fruit cars?

Mr. JOHNSTON. Yes, sir. I am not positive, but I will say it is a usual thing to put fruit and Pacific-coast freight that has come from China, and the like, on such trains—valuable merchandise.

Mr. STEVENS. On stock and sheep trains?

Mr. JOHNSTON. Yes, sir. I will say on those 35 cars there was first-class freight attached to make up the 1,300 or 1,400 tons.

Mr. STEVENS. Do you complain that on that trip you were sidetracked so that a train loaded with fruit could pass ahead of you, or did you have the right of way until you got over that hill?

Mr. JOHNSTON. You remember, now, that in answering a question concerning a division of 78 miles I probably would not be able to state specifically about that. I do not definitely remember that there was, but in the main such cars do pass us.

Mr. STEVENS. That is, fruit trains do pass you?

Mr. JOHNSTON. Yes, sir.

Mr. STEVENS. What I want to get at is this: Do you know the rate of freight that is paid by those through trains as compared with the rate of freight that you pay?

Mr. JOHNSTON. I went without my lunch to obtain what facts I could in the matter, and I called up the Baltimore and Ohio, and the chief clerk in the freight agent's office gave me this information—that \$1.15 per hundred is paid on oranges and bananas in crates that weigh for the standard 72 pounds and for the jumbo 78 pounds on oranges, and 84 pounds for the standard and 92 for the jumbo on bananas, and the minimum weight of the car is 24,190 pounds.

Mr. STEVENS. What is your rate and your minimum?

Mr. JOHNSTON. I am sorry that I did not have the time to figure this definitely, absolutely; but I have it sufficiently clear to answer your question. I am very glad you called my attention to it. That makes \$278. Mr. Gooding, do you remember the rate from Shoshone, per hundred, on lambs?

Mr. GOODING. I remember the rate per car of 23,000 pounds was \$207.50.

Mr. STEVENS. So there is not much difference, so far as revenue is concerned?

Mr. JOHNSTON. No. But there happens to be several hundred miles difference in the distance; but the impression appeared to be obtained by the committee that perhaps there was a higher rate paid on these cars.

Mr. STEVENS. That is what I wanted to know.

Mr. JOHNSTON. They are the facts as stated to me by this gentleman who designated himself as clerk in the Baltimore office of the Pennsylvania Railroad. I am pretty confident he is just about right, or within five or ten dollars, in either instance; \$207.50 I know to be right. And we pay as 1,420 miles from Chicago to Ogden is to 2,300 miles to San Francisco, and as \$207.50 is to \$278; so is the discrepancy in favor of the San Francisco haul. I am very glad I have had the opportunity to clear that point up.

We sincerely trust that, aside from the financial interest—that for the interest of humanity—you will give consideration to this amendment and that it will receive a favorable report for passage. You will find the argument has been made that this legislation should be included in a bill which should deal with reciprocal demurrage, car shortage, and so forth; but in behalf of the National Wool Growers' Association, I sincerely trust you will consider this amendment to the statutes which now govern the transportation of live stock and consider it on its own merits, and not mix it up with other intricate questions, from which it should be separate. Car shortage and many other railroad questions are not so related to this matter that they should be placed in one lot. If the cars can not be obtained, we may be disappointed; but we will have speed and can hold our stock until we get the cars. But when our cars are loaded and en route to the market, it is only fair to the humane interests of the live stock that they be moved with reasonable dispatch. We can see no reasonable objection that can be raised to this measure.

You will observe that section 4 gives power to the interstate railroad commission to make the proper exception in cases where the physical condition of the road is such that they can not meet the requirements of the 16-mile per hour speed minimum limit. The question was raised during the discussion about that requirement, regarding so much time for sidings. Take a division 100 miles long, where the engines change. Thirty minutes is ample time to change an engine and pull a train out. If there is any dispatch used in the dispatcher's office, he can have that crew ready when this train comes in. Thirty minutes is ample time to consume with a perishable train of any commodity, whether live stock, fruit, or anything that is perishable. Then, taking thirty minutes consumed at both ends of the 100-mile division, which is an hour, it will be apparent to you that that will strike one hour from the running time of 16 miles per hour, or leave it five hours, and 5 times 20 is a hundred; or, it is a rate of

20 miles an hour they must obtain. I am giving them thirty minutes for the change which should be charged up to the other division, whereas 16 miles an hour takes six hours, 6 sixteens being 96.

I am very grateful for your attention and shall be glad to answer any questions on behalf of the stock growers of this western country upon this subject. I am vitally interested in it myself. My bread and butter have for many years depended on it and probably will depend upon it for the rest of my days. But, aside from that, there is something so unmanly, so ungenerous, so unfair, so inhuman in the punishment of this stock to the production of which a man has given his life and energy that it is but fair to consider it in some manner or other, and we ask for specific legislation on the subject.

I want to say, too, that so far as the rate question is concerned, it should not enter into the discussion here. That is absolutely within the power of the Interstate Commerce Commission already by United States statute. If the rate is not sufficiently high, raise the rate. I have offered to pay \$50 a car, time and again, for a faster run, and it has been refused every time, and why? It will be apparent to you that if but for one time a positive case could be cited that the railroad had pulled the cars through according to a time schedule it would be a very proper thing to ask them to do it all the time. I can show you correspondence where they have refused to accept more money; but we are not begging for the railroads.

Mr. TOWNSEND. You do not claim that they should be made to accept any bonus you may offer them?

Mr. JOHNSTON. No; I do not claim that. But I would give anything to take this stock down. In the case I mentioned at first, I would have given \$1,000 and still would be \$1,000 in pocket as against the actual loss I did suffer.

Now, in answer to the gentleman from Minnesota, I wish to state my positive experience in transferring onto the Milwaukee. There is a transfer made in Council Bluffs. Usually there is a very congested condition there. They attempt to make the runs, and sometimes that road is not treated very fairly in the transfer. But they do not get hold of the stuff in time to pull it in. They make a very good run, but there is always a long delay at the river. I cite that in justice to the railroads. We want to be friendly with the railroads. We need them, and I would not wonder but what maybe they want us. But we want a fair deal in this matter, and in the consideration of it we want a fair statement of the facts as they really exist, as they really have existed in the past thirty years in the experience of live-stock shippers. I never had any trouble when I got against those competitive roads, never a particle of trouble. From Nebraska on I always sleep easy, for there are four main trunk lines, and they are all out for the money. I do not know whether they are all together or not, but I know this, that they give you a very good run.

Mr. STAFFORD. When reaching a competitive point, have you the power of selecting the route over which your shipment is to go?

Mr. JOHNSTON. Yes, sir; in this instance. We have not with our wool, but that is another phase that I shall not take the time of the committee to discuss.

I thank you for your attention.

STATEMENT OF E. H. McALLISTER, PRESIDENT UTAH WOOL GROWERS' ASSOCIATION.

Mr. McALLISTER. Mr. Chairman and gentlemen, I am president of the Utah Wool Growers' Association, of Salt Lake City. I will not take up the time of this committee but for a few minutes. I appeared before the subcommittee in 1908 and made a statement at that time that I do not think I could enlarge much upon. Our association is in full accord with the national association on this speed-limit bill. It is the uncertainty that our shippers have to experience about which we are objecting. We do not know whether we will get a 16-mile run, an 8-mile run, or a 4-mile run. If there was some certainty about live-stock trains, so that we could tell where our feeding places would be, and when we would reach our final destination, we would feel much better over it.

I have no practical experience to give. Mr. Johnston has given you his, and Mr. Gooding has given you his. We feel that there ought to be a certainty in delivering live stock. We surely ought to have the preference over every other freight and be next to passenger trains.

We object to the tonnage system being applied to stock trains. We believe that when we have a reasonable stock train it should be pushed through instead of being stopped and laid up with other freights.

Gentlemen, I will not take any more of your time. I will just state that is the feeling of the stock growers of Utah. We believe we ought to have a speed limit of at least 16 miles in justice to the shippers and the stock of the western country.

Mr. WANGER. Are you a shipper yourself?

Mr. McALLISTER. Yes, sir.

Mr. WANGER. Over what road?

Mr. McALLISTER. We ship over the Union Pacific, from Altamont, Wyo. While Utah men, we graze in western Wyoming and eastern Utah.

Mr. KNOWLANDS. Do you have less difficulty in the makeup of an entire stock train than you do with a mixed train?

Mr. McALLISTER. I do not know about that. I certainly think we do. I have not traveled on a stock train for about twelve years. But years ago when we made up a stock train we got a very fair run. It is of late years that there has been complaint on account of the tonnage distance and the adding of other freight to stock trains.

Mr. TOWNSEND. Has your association ever taken this matter up with the railroad organizations to see if you could not agree upon some rules which you would stand by?

Mr. McALLISTER. No; my association has never taken it up individually.

Mr. STAFFORD. I assume the difficulty of having a through stock train arises over the different tonnage rules of the various systems over which you have to transport your shipments.

Mr. McALLISTER. That is what I understand. I believe if the tonnage system was abandoned on live-stock trains, we would get much better service and there would not be so much complaint. It is the uncertainty, gentlemen, that our Utah men are objecting to. If we knew when we could arrive at the markets we could better estimate

the shrinkage of our stock, better estimate where to feed and pick out our feeding places. But the way it is now, we do not know where we can unload or when we will reach the market. I thank you for your attention.

**STATEMENT OF GEORGE P. McCABE, SOLICITOR FOR THE
DEPARTMENT OF AGRICULTURE.**

Mr. McCABE. I am here in response to the request of the committee, prepared to answer any questions the committee may ask me, as sanely as I can.

Mr. WANGER. You have had experience with the operation of this act. Will you detail conditions at and after the amendment to the act in 1906?

Mr. McCABE. Yes, sir. Prior to the enactment of the 1906 bill the Department of Agriculture was proceeding to enforce the law to the best of its ability. The inspectors of the Bureau of Animal Industry were collecting cases and sending them in to the Washington office. We were sifting them out, gathering the evidence and sending them to the Attorney-General to be sent to the proper United States attorneys for prosecutions. We had piled up over 2,000 cases. While the law had been on the statute books since 1873, it had been a dead letter. I think there were 50 reported cases and of those I could find there had been but 15 prosecutions in something like thirty-one or thirty-two years. The railroad companies started to comply with the terms of the law, that is they started to unload at the expiration of twenty-eight hours. There was no provision in the law that the live stock should be unloaded in a humane manner or that it should be unloaded into properly equipped pens, and they unloaded it anywhere and everywhere, sometimes in pens belly-deep with mud and sometimes onto the prairie. The result was that from a humane standpoint greater suffering ensued to the live stock than if they had been carried on without being unloaded at all.

When the matter was taken up by the live-stock association and was referred by the proper committee to the Department of Agriculture for consideration, it was the view of the Secretary of Agriculture that the law needed amendment, that there should be a provision providing for properly equipped pens and for humane loading and unloading, and that there should be a speed minimum. The law was passed, but the speed minimum was omitted.

I think there has been a great deal of misapprehension as to the conditions to-day. It is my honest judgment that every railroad company in the country to-day is trying its best to obey the law as it is on the statute books. For the fiscal year ending June 30, 1908, the Department of Agriculture reported nearly a thousand violations to the Department of Justice for prosecution. For the fiscal year ending June 30, 1909, we reported not quite a third of that number. We had an increased number of inspectors on the road, and I think that they were at least as vigilant as they had been in the past. That to me seems proof that the railroads are at least obeying the law.

What is the result? The title of the act is "An act to prevent cruelty to animals while in transit." I feel satisfied, from personal observation and from the reports of the inspectors, that by complying with the terms of the law greater suffering is inflicted on the

animals in interstate transportation than ever before, and for this reason: A great deal has been said here to-day about the tonnage system. I am not a railroad expert, but it is a matter of common knowledge that one theory of railroading now is to move the utmost possible tonnage with one engine, no matter how slow you move it. If it is applied to live-stock movements the railroad company goes along and makes up a live-stock train—I do not think it makes very much difference whether it is all live stock or part rails. Perhaps our friend, Mr. Johnston, may have barked his shins when getting over the rails to get to some other cars, and that may have accounted for the objection to the rails. But the tonnage is there and they can not make the speed. What is the result? They unload the cattle or the sheep every twenty-eight hours, if a man does not sign a request, and every thirty-six hours if he does sign it. Every additional time those range cattle or those sheep are unloaded, with the consequent reloading, it is an additional hardship to them.

So it is my personal judgment that to carry out the object of this act as announced in its title—an act to prevent cruelty to animals while in interstate transit—the only way to do it is to provide that the time between the point of loading and the point of destination shall be shortened. The only practical way is to provide for a speed limit, as I see it.

There are extreme cases. Somebody has said something in the papers about the humanitarians being made up of long-haired men and short-haired women. I am not very long-haired, but when you see some of these cases, when you sit at your desk and these cases come in to you day by day, you can not help getting up a little feeling of righteous indignation. I picked up a case this morning where it was reported sheep had been confined so long they had eaten the wool off each other's backs. They had been in the cars fifty-six hours without being unloaded. It was a violation of law, and, of course, we will prosecute them. But I can not help but feel the imposition of a penalty as provided in this act does not begin to make up for the suffering inflicted upon these animals. That may be the view of a sentimentalist, but I confess it is my view. That is an extreme case.

One other thing I want to make clear. The figures that were used this morning by Doctor Spillman can not fairly be said to be representative of the rate of speed which is consumed by railroads in moving live stock, because those figures were made up, as Mr. Mann pointed out, from reported violations of law where there probably had been unusual delay, so that the rate of speed that is shown in those figures would not be fairly representative of the rate that was observed.

If there are any questions that members desire to ask, I will be glad to endeavor to answer them.

Mr. STEVENS. From your experience, then, you would think the practical effect of such an act as is before us would be to require the abandonment of the tonnage system in moving stock trains.

Mr. McCABE. Yes, sir; or the putting on of a few more engines. I overheard the testimony this morning, and some one asked the question—I think it was Judge Kennedy—about the prosecutions we had made during rush times. The answer the court has given is this, that the railroad company is a common carrier and it holds itself out to

accept this live stock subject to all the statutes, and its duty is to provide equipment sufficient to carry on its business in a lawful way. There is really a case where more power would not result in more speed. Perhaps I should refer to another thing that was mentioned this morning, the question of the enforcement of the law. The law is being enforced. It is being enforced vigorously. There are pending in the courts now, I think, only about 300 cases, and those cases are none of them more than fourteen months old. When we consider the work on the calendars, there has been no delay in disposing of them.

Mr. STAFFORD. Do I understand you to take the position that the penalty prescribed in existing statutes is not adequate to compel the railroad companies to respect it?

Mr. McCABE. No; I would not want to take that position. I do not think you would better the situation. You might lessen the number of violations of the letter of the statute if you increased the penalty, but the railroad companies, I know of my own knowledge, have discharged their dispatchers, have discharged conductors, have discharged yardmasters, for not obeying their instructions in unloading the animals. The point I want to make is that this unloading of the animals instead of benefiting them from a humane standpoint has been of positive injury to them.

Mr. STAFFORD. What was the occasion for the very harsh and inhumane case you mentioned of the shipment of cars where the sheep were obliged to feed off the wool of other sheep?

Mr. McCABE. The average railroad man is no more inhumane than you and me. It is not a deliberate question of starting out to do it, but it is a question of neglect.

Mr. ADAMSON. To accelerate the speed of these cattle trains would in effect be raising the classification and raising the rate?

Mr. McCABE. No, sir; I do not think so. I think that starts upon a premise I am not competent to say whether correct or not. It starts on the premise that railroad companies are giving to stockmen now all they are paying for, and I do not know whether they are or not.

Mr. ADAMSON. If the arrangement is changed by making this class of trains faster, some other must give way to it, and it is probable that the railroad would insist that there should be a rearrangement of charges.

Mr. McCABE. I think Nebraska has a statute requiring 18 miles an hour on interstate trains. That case has been contested on constitutional grounds, among others taking property without due process of law. The supreme court of Nebraska, in sustaining the constitutionality of the law, pointed out very clearly that the railroads had accurate cost-keeping systems. They know what it costs them, and if they could make a proper showing at any time, they could increase the rate. I have not heard that the rate has been increased in any States where they have a speed-minimum law.

Mr. STAFFORD. In your examination of these complaints cited this morning by Doctor Spillman, do you find they arise at any one period of the year, or is it usual throughout the year?

Mr. McCABE. There are two seasons of the year, of course, when there are great movements of live stock, and as there are more movements at that time of the year, there are, of course, more violations.

Mr. STAFFORD. They are not due to any climatic conditions, necessarily?

Mr. McCABE. Oh, occasionally. For instance, one road I think of, the Union Pacific Railroad and the Southern Pacific, after the San Francisco earthquake, experienced great trouble. They had a rush of passenger business and had great trouble handling their live-stock movements.

Mr. STAFFORD. Regardless of the equipment, under the existing statute the carriers can conform by permitting them to be fed every twenty-eight or thirty-six hours?

Mr. McCABE. Yes, sir.

Mr. STAFFORD. But have you considered in framing your amendment whether the far western railroads, where the equipment is very poor—for instance, the Soo line in Dakota, which I have ridden over—would be incapable by reason of their very uncertain roadbed in meeting the requirements as prescribed in this bill?

Mr. McCABE. I think, and I express the opinion with some hesitation, because I do not assume to be a railroad expert at all, that any road can certainly make 12 miles an hour on live stock.

Mr. STAFFORD. It was said here this morning that to make 12 miles an hour it would require 30 miles while under highest speed, and it has been claimed that on some of those western roads where the road bed is very poor that there are many instances where the train jumps the track going at that rate of speed.

Mr. McCABE. Yes, sir. Of course that is a matter for the consideration of your committee. But it is in the endeavor to meet that that provision is made in section 4 that the speed minimum may be reduced by the Interstate Commerce Commission on a proper showing by the carrier. Of course as to whether or not that is low enough is a question of detail.

Mr. WANGER. What has been the experience under the state laws that have fixed their minimum rate of speed?

Mr. McCABE. I do not think, with the possible exception of one State, that the speed-minimum laws of the States have been vigorously enforced.

Mr. WANGER. I observe in your reports for 1908 and 1909 a number of cases against the terminal railroad association of St. Louis.

Mr. McCABE. Yes, sir.

Mr. WANGER. How do the delays occur there?

Mr. McCABE. Well, they do not any more. The law provides that the time consumed by connecting carriers shall be computed. For instance, if a shipment starts on the Union Pacific or on the Oregon Short Line and the Oregon Short Line makes a delivery at the expiration of eighteen hours to the Union Pacific, the eighteen hours which was consumed by the Oregon Short Line is counted against the Union Pacific, and similarly the courts have held that where the twenty-eight hours has expired or where the thirty-six hours has expired a connecting carrier, which receives the live stock knowingly after the time has expired, is also amenable to the statutes. That was the case very largely with the terminal railroad of St. Louis. They were receiving live stock after twenty-eight hours and thirty-six hours had expired, and they made themselves liable under the statute on that account.

There was also a delay there. It shows what can be done. I went out at one time to St. Louis ~~and went over the whole situation~~

with the president of the terminal company. I went out on the tracks and over on the two bridges—the Merchants Bridge and the Eads Bridge—and observed the movement. I saw there where they had shortened up prior to the enforcement of the twenty-eight-hour law, sometimes two or three hours. After starting the enforcement of the twenty-eight-hour law, everybody got up on their toes and cut out all unnecessary delays.

Mr. WANGER. Does any other person wish to speak for the bill? If not, you gentlemen representing the railroad companies may proceed.

STATEMENT OF F. C. RICE, REPRESENTING THE CHICAGO, BURLINGTON AND QUINCY RAILROAD.

Mr. RICE. My name is F. C. Rice, of Chicago. I am connected with the Chicago, Burlington and Quincy. The Chicago, Burlington and Quincy traverses what is known as the "corn belt" of the United States, and necessarily it must be a large stock-producing country through which we go. The Chicago, Burlington and Quincy handles more stock than any other railroad in the world. The next railroad to it is the Chicago and Northwestern, and the next railroad to that is the Chicago, Milwaukee and St. Paul. The Chicago, Burlington and Quincy in Illinois has the largest mileage of any railroad in the State and, as I said, traverses the corn belt of Illinois. It has the largest mileage in the State of Iowa of any other railroad, and the State of Iowa is a corn-belt State. It has the largest mileage in the State of Nebraska of any other railroad, and that is known as a "corn-belt State." The Chicago, Burlington and Quincy has about 1,500 miles of railroad in the State of Illinois, and between seven and eight hundred miles of that road is composed of branch lines. There are 15 branch lines in the State of Illinois which empty into main lines, there are 16 branch lines in the State of Iowa which empty into main lines, and there are about 25 branch lines in the State of Nebraska which empty into main lines.

The stock that originates on the branch lines very frequently is delivered to a main line, and from that main line to another main line, and from that main line to another main line before it reaches the main line that finally takes it to the Chicago market in Illinois. The same is true in Iowa, and the same is true in Nebraska.

The stock on our main line, usually from Chicago to the Mississippi River, to Burlington, Iowa, and from Burlington, Iowa, to Omaha through Iowa, and from Omaha west on the main line, makes better time than is made anywhere else on our system. After all, we are never able to make the time we would like to make with our stock. I have been very closely connected with the stock traffic practically all my life, before the railroad extended west of the Mississippi River. I know stockmen pretty well, and I think I understand what it means to handle stock. We have a great many branches that are 70 miles long or 100 miles long that are in very large stock-producing countries. And on certain days of each week—say for a Monday morning's market or a Wednesday morning's market—those particular days are devoted to stock shipping. I know I can recall several hundred-mile branches where we start out with an engine and a caboose and run that 100 miles, and when we finish the trip we may

have 25 or 30 or 35 cars of stock in the train, and we have not made over 7 or 8 miles an hour. The reason we have not is because of the time it takes either to load or pick up the stock. Oftentimes the stockmen are not ready with their stock. They have not got it loaded or they are in the midst of loading it, or sometimes the stock is even approaching the station when our train arrives.

We do not want to go off and leave the stock, so we stop and help load it. I do not think we ever ran a train in our lives over that 100 miles and made 10 miles an hour and picked up a train of stock. It can not be done. That is a simple illustration of all those branch lines I have mentioned. The same thing obtains everywhere.

Mr. WANGER. How many stops would you make in that hundred miles?

Mr. WRIGHT. In the hundred miles I was thinking of we made about 20. There are 26 stations there. I have operated the line as train dispatcher, as train master, and as superintendent. As I said, we make better time on our main line, but it is impossible on the main line to catch up the time we lose on the branches. As I understand from the law, we are liable to fine or to penalty unless we make 16 miles an hour from the time the stock is loaded until it is delivered at its terminal, at the end of its run.

You all know what a large stock market Chicago is, and you know that we have, for instance, the hours-of-service law to obey. We must not keep our men on duty over sixteen hours. We have positive instructions, which are literally carried out, that no trainmen or enginemmen who arrive at the connection in Chicago with the stock-yards tracks shall be permitted to start to go with the train that is brought into the stock yards, which is 4 miles away, unless they have six hours to make it. If they have less than six hours, they do not start. The whole crew is relieved by a fresh crew of men, because of the uncertainty of getting to the stock yards without violating the law. So that you can see, with the best time we can possibly make upon our main line, the time it takes for delivery at the stock yards could not possibly be helped by any human being. There is no possible way it can be improved.

Mr. TOWNSEND. Is the length of time it takes to move a carload of stock now increasing or decreasing as compared with past years?

Mr. RICE. I think for the last three years the time consumed on the road and in handling the stock is very much improved.

Mr. TOWNSEND. It is improved?

Mr. RICE. Yes, sir; it is improved. I think it is the purpose of every railroad to improve it. I think myself it pays to improve it, and I think that the railroads are honestly striving to improve it.

Mr. TOWNSEND. What are your rules as to tonnage? Will you permit the movement of a train unless it has the maximum tonnage?

Mr. RICE. I do not think that rule was ever enforced on our railroad; that is, to restrict a train to the maximum capacity of its engine.

Mr. TOWNSEND. Do you try?

Mr. RICE. We do not try even to do it. Of course we know. We have ratings for our engines. We know what they ought to do, what we have seen them do, and what they can do. But we realize it does not pay.

Mr. ADAMSON. I suppose that, situated as you are with those branch roads, you can not always get a full train load, and you have to pick up a car or two at each intersection?

Mr. RICE. That very often happens.

Mr. ADAMSON. So that you have in your train load different cars in which cattle have been confined different lengths of time?

Mr. RICE. Yes, sir. We may come in at a junction point with the main line with a few cars of stock, maybe 5 or 10 or 15, and it is arranged to have those cars picked up on the main line either by a regular scheduled train or some extra train which is specially arranged to pick them up.

Across Illinois we have some 10 junction points. It is impossible to have a train right there then and ready to pick up that stock when it comes in. Of course, the stock has to be switched out of the train that brought it in and switched into the train it is to go in.

Mr. TOWNSEND. What arrangement have you as to classification of freight? Do you have certain classifications of freight that take preference over others?

Mr. RICE. Yes, sir. On the Chicago, Burlington and Quincy, which is eminently a stock road, as you know, stock takes preference over everything.

Mr. TOWNSEND. You have no fast-line freights that take preference of it?

Mr. RICE. We have no train of any character that takes preference to the stock train. It does not now and never has on our railroad; that is, by any regulation or rule. If it has been, the preference has been given in particular cases by some subordinate employee.

Mr. STEVENS. From how far west do you run through stock trains to Chicago?

Mr. RICE. We do not run very much stock to the Chicago market from west of the Mississippi River, from west of Omaha.

Mr. STEVENS. What do you do with the stock you get west of Omaha?

Mr. RICE. It goes into the packing houses at Omaha, St. Joe, or Kansas City and Nebraska City. Formerly that stock all went to Chicago, but for several years past it stopped at the Missouri River. We run very little stock originating in Nebraska to Chicago.

Mr. TOWNSEND. How do you observe the law now? Do you have any regard to the place the twenty-eight hours will get you to?

Mr. RICE. We are very fortunately situated for stock yards. We have stock yards in Nebraska, stock yards in Iowa, and in Illinois. At my home town at Galesburg, Ill., we have large stock yards, and it is always convenient to get stock to the yards. I have not heard of any complaint from stock men in any manner, shape or form for three or four years as to the twenty-eight hour law or as to our handling of the stock and the time we make with it.

Mr. STAFFORD. How long does it take for the various stock trains to run from Omaha to Chicago?

Mr. RICE. As I said, we do not run hardly any stock there, but we figure twenty-four hours if we do run in.

Mr. STAFFORD. And the distance is how much?

Mr. RICE. Five hundred miles. I think the Northwestern and the Rock Island and St. Paul roads do run considerable stock from the Missouri River to Chicago.

We have the same difficulty to which I referred at the Union Stock Yards in Chicago, at Omaha, and St. Joe, and Kansas City, and at St. Louis, East St. Louis, and Peoria. Those are the stock markets. But it is not so great as it is at Chicago and Chicago can not be helped. I do not see what anybody can do.

Mr. STEVENS. What occasioned that delay, congestion of business?

Mr. RICE. Yes, sir; congestion of business.

Mr. BARTLETT. You say if this sixteen hours minimum speed be adopted it would be utterly impossible for you to comply with it on those branch roads?

Mr. RICE. We would be fined 500 times a day and subjected to penalty, and could not help it. We can not make 12 miles an hour, either.

Mr. BARTLETT. Is it not a fact, did not you say just now that when you started a train upon these branch roads it sometimes consisted merely of an engine and a caboose?

Mr. RICE. Yes, sir.

Mr. BARTLETT. And you gather up the other cars as you proceed?

Mr. RICE. Yes, sir.

Mr. BARTLETT. And you necessarily lose time?

Mr. RICE. Of course; you can not help it.

Mr. BARTLETT. And you say, as I understand you, that the rate of speed does not exceed 8 or 10 miles on branch roads?

Mr. RICE. That is from one terminal of the branch road to the other terminal of the branch road you would not exceed 7 miles an hour.

Mr. BARTLETT. And it would be impossible when you strike the main line to make up the time?

Mr. RICE. That is true.

Mr. TOWNSEND. Have you any way freights that move faster than that? What time do they make?

Mr. RICE. Very slow time.

Mr. TOWNSEND. Slower than 7 miles?

Mr. RICE. I won't say that. We try to get our way freights to make 10 miles an hour, but we do not succeed in it.

Mr. TOWNSEND. I have been informed, and you will know whether or not it is correct, that way-freight trains on the average road make 14 and 15 miles an hour. I was wondering, if that were true, why equally fast time could not be made with stock trains, the same as is made by way-freight trains that stop at every station.

Mr. RICE. You are dead right about that. I do not believe there is a way-freight train in the world that moves over 10 miles an hour, and there are very, very few way-freight trains that make that speed, because they have to stop at these various stations and switch and run onto sidetracks connected with industries and various plants at such stations.

Mr. TOWNSEND. Did I understand you to say there has been absolutely no complaint to you in the last few years from shippers?

Mr. RICE. I have been connected closely with stockmen for several years, and there has been no complaint.

Mr. TOWNSEND. Have you been fined, brought into court for violations?

Mr. RICE. Not once. We have not been fined once by the Government.

Mr. STEVENS. The report of the Solicitor of the Agricultural Department, who has just been on the stand, states that for the year ending June 30, 1909, the Chicago, Burlington and Quincy was fined and paid 13 separate fines in that year.

Mr. RICE. I never heard of it.

Mr. WANGER. And 16 the year before.

Mr. RICE. I never heard of it. I was going to qualify my remark by saying I had not heard of it if there had been such a fine.

Mr. STEVENS. Where do you live?

Mr. RICE. At Chicago.

Mr. STEVENS. And 10 of these fines were paid in Chicago.

Mr. RICE. I wanted to qualify my remarks by saying I did not know sure about that. But think of 13 cases. We are the largest stock railroad in the world. I do not mean we are just a little larger, but we are very much the largest.

Mr. TOWNSEND. I was wondering, inasmuch as you had not heard of the court cases brought against you for violation of the law, if you would know about the complaints of the shippers.

Mr. RICE. Of course I might not know about all complaints of the shippers, but I think I would. I am pretty sure I would. As to the fines, I was down here four years ago. I came down to see the Secretary of Agriculture about the twenty-eight-hour law. We were all checked up about obedience and compliance with that law. I was one of the committee of three or four who called upon him to try and help and get the railroads to obey the law honestly. They had a number of cases against us at that time. They had a whole lot of cases against my railroad. If they had imposed all of those fines and prosecuted us, it would have cost us a good deal of money, but they did not do so on our promise and the promises of several others of us that we would try and make an honest effort to obey the law, and so they let us off.

For two years I was in pretty close touch with the Department of Agriculture and with Doctor Melvin. I called on Doctor Melvin several times to inquire how we were doing, what complaints he had, and it was very pleasing to me to hear Doctor Melvin tell of the very satisfactory way in which the Chicago, Burlington and Quincy handled its stock.

I am very sorry I did not know about those 13 cases, because I do not think that is a very bad record for a railroad that handled in 1907 139,000 cars of stock. The next railroad in the world to that was the Chicago and Northwestern, which handled 103,000, and next to that was the St. Paul, which handled 84,000.

Mr. BARTLETT. Do you run separate stock trains, or do you run the stock cars in mixed trains?

Mr. RICE. We try to run separate stock cars whenever we possibly can. We can not do that on the branches, of course.

Mr. BARTLETT. Is not a good deal of this delay due to the picking up of cattle cars? Does not some delay occur in picking up additional cars in these cattle trains?

Mr. RICE. On our main line we try to marshal these trains, assemble the stock and get them into stock trains, and not have any dead freight or any other class of freight with them.

Mr. BARTLETT. Do you ever have separate trains of stock alone and no other freight with it?

Mr. RICE. Oh, yes, sir; every day.

Mr. BARTLETT. And does the same delay occur as would occur in picking up all kinds of freight and putting it in the stock train?

Mr. RICE. Yes, sir. It takes as long to pick up a car of stock as a car of dead freight. Only I say when we assemble our stock on the main line at terminal points and at larger points we try to make them up into a full train, so that they will not be bothered with push freight, and they go from that point to the market. My headquarters have been at Galesburg. They are not there now, but they were for thirty years, and I always tried to make stock up into separate trains. There are thousands of times I have seen 20 stock trains leave my division and go to Chicago, 163 miles, without a car of anything else in them.

Mr. BARTLETT. When you have a separate stock or cattle train, does the same delay occur?

Mr. RICE. In picking up?

Mr. BARTLETT. Yes.

Mr. RICE. Yes, sir.

Mr. BARTLETT. Without picking up any other except that?

Mr. RICE. Of course the delay is the same. As I have already explained, we make up solid stock trains at Galesburg, the converging point where stock comes from various directions. We get the bulk of it and there is an opportunity for us to make up solid trains, and we try to do that and keep the dead freight out of the stock.

Mr. BARTLETT. As I understand you, you say you could not obey the 16-mile minimum even if it was applicable alone to stock trains?

Mr. RICE. No, sir. If no dead freight was put in it, we could not do it. At my station, at Galesburg, where I had absolute charge, we would have five or six or seven trains of stock come in from various directions, all converging at this point and coming together within a period of two or three hours. We tried to get this stock together. We would have to pick it out of one train, this train and another train, assemble it, and get it into one train. The stockmen preferred not to have any dead freight in their trains.

Mr. KNOWLANDS. After you get it into one train, in going from one point to another point you can easily make 12 miles or 16 miles?

Mr. RICE. Yes, sir.

Mr. KNOWLANDS. For instance, the stock arrives at one given point. Of course this is not on your line, but say it is at Ogden, and wants to go to Omaha. If you made up a stock train at Ogden to go right through to Omaha there would be no trouble about the time?

Mr. RICE. Oh, no.

Mr. WANGER. What is the running time of stock trains from Galesburg to Chicago?

Mr. RICE. For about fifteen years, when I was in charge there, I was never satisfied if a stock train did not make 20 miles an hour from Galesburg to Chicago. If any stock train made less than 20 miles an hour, I always took the matter up to see why it was. I knew I had to do that. I knew I had to do it to make up for slower time made elsewhere. Galesburg happened to be a large

feeding place, where we fed from 250 to 350 cars of cattle in one day. We had to unload 300 cars of cattle, if there were that many, and we had to load them up. Of course the stockmen all wanted to lie at that point until the very last minute, so as to get into Chicago at the proper time. The proper time is between 7 and 8 o'clock in the morning. The stockmen always consider—and it is probably true—that stock that arrives between 7 and 8 o'clock in the morning is worth from 5 to 10 cents a hundred more than it is if it arrives after 9 o'clock in the morning.

Mr. STEVENS. You stated that you did not ship many cars of stock from Omaha to Chicago.

Mr. RICE. Yes.

Mr. STEVENS. Then you do not ship many from west of Omaha, from Denver and those ranges, right through to Chicago?

Mr. RICE. I meant that; I meant that very little stock passed the Missouri River.

Mr. STEVENS. Do you get many stock cars from the Union Pacific Railroad in the course of a season transmitted through to Chicago?

Mr. RICE. We do not get any.

Mr. STEVENS. You do not get any?

Mr. RICE. We do not get any; no.

Mr. STEVENS. So that the complaints that these gentlemen have made here to-day would not obtain as to your line?

Mr. RICE. No. That is, I would not say that we did not get any. The Northwestern road is the connection of the Union Pacific; it is under the same control and management, in a way. They work in harmony, and they get the stock, I think, from the Union Pacific. We do not think we get any of it, unless it is stock going to some local place.

Mr. WANGER. Is the running time of stock trains between Galesburg and Chicago the same as it was when you were living at Galesburg?

Mr. RICE. Yes. I think we have improved a little upon that. We have tried to improve upon it.

Mr. STEVENS. Are you personally familiar with the speed of stock trains west of the Missouri River?

Mr. RICE. In a general way I am.

Mr. STEVENS. How would the speed of stock trains there compare with the speed of trains around Galesburg?

Mr. RICE. I have been out on the Nebraska lines; I go out two or three times each summer or fall during the stock-shipping periods, and the positive orders to the superintendents of the different divisions there are that they must make 20 miles an hour.

Mr. STEVENS. That is, of actual running time?

Mr. RICE. From the time they leave one terminal until they arrive at the next terminal.

Mr. STEVENS. You refer to division terminals?

Mr. RICE. Division terminals; yes. And I understand that that is done at a very great sacrifice.

Mr. STEVENS. A very great sacrifice of what?

Mr. RICE. That is, that other trains are delayed and great advantages are given to these particular stock trains. Other trains are kept out of the way, and they are run very light, and great effort is made to make that time to help the stockman; and it is right that

that should be done. They have long distances to travel, and I am in full sympathy with the fast time for their stock.

Mr. WANGER. That is in Nebraska?

Mr. RICE. In Nebraska; yes.

Mr. STEVENS. Does the eighteen-hour law in Nebraska rather accelerate that system of orders?

Mr. RICE. I do not think it has anything in the world to do with it. That was our practice before any such law was passed.

Mr. WANGER. What is your practice in Missouri?

Mr. RICE. We make fully as good time on our main lines in Missouri as we do in Nebraska.

Mr. WANGER. Are there any other questions? Do you wish to say anything further, Mr. Rice?

Mr. RICE. I think not.

Mr. TOWNSEND. Have you a Northwestern man here that is going to testify, and a Union Pacific man?

Mr. NEALE. I think not; sir.

A GENTLEMAN. We will have them here at some time later.

Mr. RICE. I am very sorry there is not a Northwestern man here, and a St. Paul man, or a Rock Island man. They are roads that are run through practically the same country that we do, and they are large handlers of stock.

Mr. TOWNSEND. It is very important for us to have here some of those gentlemen against whose roads we have been taking testimony.

Mr. PAULDING. If you can adjourn this hearing for a few days, we will engage to see that the representatives of some of those roads are here. I can not answer for the roads, but I can answer for my associates in saying that we will endeavor to get them here.

Mr. RICE. I can say to you gentlemen that before coming to this hearing, before I left my hotel, I wired to the Chicago managers of both those roads and told them they ought to be here, and asked them to come here. I did not know whether they could get here in time to be heard or not, but I have asked them to come here. I thought it was their duty to be here to explain the situation to you.

Mr. WANGER. That is, you sent for them to-day?

Mr. RICE. Yes; just before I came into this room.

Mr. KENNEDY. Where you maintain a speed of 20 miles an hour with these trains, they are all made up when they start?

Mr. RICE. Yes, sir.

Mr. KENNEDY. And they take on no more freight?

Mr. RICE. No, sir.

Mr. KENNEDY. They run as through freight?

Mr. RICE. Yes, sir. You can not make 20 miles an hour with any train and do any work. That is absolutely a fact. I have run 20 trains out of Galesburg, and had every one of them go to Chicago (a distance of 163 miles) in six hours. I have had a passenger train that was due to leave Galesburg at 12.40 midnight (and it is due to leave at about that time now), and I have had four or five stock trains that would pull up from the yard for Chicago, and could not go because of that passenger train. They would have to wait until that passenger train was due to go, in order to keep out of its way. They had no rights, you know, against that passenger train. I, myself, have held that passenger train an hour at Galesburg many a time, and let four, five, and six stock trains go right out of town on that pas-

senger train's time and go to Chicago, and clear the passenger train's time.

Mr. KENNEDY. What I was going to ask you was this: What time do your local passenger trains average over your lines?

Mr. RICE. From 22 to 25 miles an hour. We try not to have a local passenger train on our local minor branches or on our principal branches faster than 24 or 25 miles an hour.

Mr. STEVENS. Is that the running time?

Mr. RICE. That is the time from one terminal to another.

Mr. STAFFORD. That time is increasing with the years and the improvement of service on the lines; is it not?

Mr. RICE. No; it is not. I am talking about branches.

Mr. STAFFORD. Oh! I mean on the main line.

Mr. RICE. Oh, yes; yes.

Mr. KENNEDY. That is pretty good time for a local passenger train on a branch road—22 miles during the whole run, including stops.

Mr. RICE. Yes; but it is not as fast as the people would like to have it.

STATEMENT OF MR. W. H. NEWELL, OF ROCKY MOUNT, N. C., REPRESENTING THE ATLANTIC COAST LINE.

Mr. NEWELL. Mr. Chairman and gentlemen, I just want to say a word or two about this proposed minimum schedule of 16 miles per hour.

Mr. WANGER. You represent what road?

Mr. NEWELL. The Atlantic Coast Line, sir. I feel quite sure that you gentlemen, and many of our friends among the stock growers and stock shippers do not understand the thousand and one troubles we have in making schedules. I have been making schedules and handling trains in the transportation department generally for over thirty years continuously. In order to make a schedule of 16 or 18 miles an hour, taking into consideration the question of arbitraries (and what we call "arbitraries" are water stations, coal stations, railroad crossings, and various other things that we have to contend with), we have got to run from 30 to 35 miles an hour. That is a fact.

I just want to cite you one instance that came under my observation last night. I feel that I am quite familiar with the details of this subject, because I was born and raised on the railroad, and it seems to me I have been in almost every department connected with operating. In passing through the city of Richmond last night I met my general yardmaster, and I asked him this question: "How many cars of stock are you going to get to-night from the stock yards?" He said: "Six." I asked: "What time will you get them?" He said: "I will get them at 6 o'clock." "When will you forward them?" "I will forward them on our regular package train, what is known as the 'carded train,' at 9 o'clock."

I want to explain that. The "carded train" is our high-class freight train. We group three commodities, especially, viz, stock, perishable freight of any class, and merchandise freight. Those commodities are handled on those trains and are given the preference, and the service really ranks next to the passenger service.

The six cars that he forwarded went to six different destinations. They were all cut off at one place; that is, one distributing point, Rocky Mount. We have various branch lines there in almost every direction. From Richmond to Rocky Mount, a distance of 125 miles, the schedule is five hours and forty-five minutes, or practically six hours. We would arrive at Rocky Mount at 3 o'clock in the morning. We would have one car of stock going to A, another one to B, another one to C, and so on. The local schedules from that particular distributing point are arranged, of course, according to the local conditions, varying from perhaps 10 o'clock in the morning to 11 o'clock, 12 o'clock, and so on, up to possibly 3 o'clock in the afternoon. As a result some of those cars would remain on the sidetrack at that point for several hours. They would, perhaps, not get to their destinations in less than twelve or fifteen hours from the time they started from the original point or from the connection, and would not average 6 miles an hour.

You understand that the conditions are practically the same on the little branch lines. We have a great number of them; and that will hold good all the way from Richmond to Tampa, Fla. If we were required to make a minimum of 16 miles an hour on those little branch roads, knocking us out in that way, where we have comparatively little traffic, it would be absolutely necessary to run a great number of special trains to properly care for one car of stock. I am sure that would be very unreasonable; and I know you appreciate that.

I simply mention that as an illustration. That would occur all the way down the line. There are many other objections to this bill. Among them is that the law now requires railroads to see that stock is fed, watered, and rested after having been confined in the car for a certain length of time. You understand what that is. Speaking for most of the roads in the South (I am more familiar with the roads south of Washington than with those elsewhere), I do not know of any department of railroading that is more thoroughly lined up than that of the movement of stock, unless it is the passenger service. Mr. McKaig, who spoke here a few moments ago very intelligently, explained that matter. The management and all the railroad people want to carry out this law. But, unfortunately, we can not have all of our men perfect. Therefore, the law may be violated sometimes. At the same time, we are doing everything in the world we can to keep from violating it. For the Lord's sake, do not put additional restrictions on us that will not help the matter from a humanitarian standpoint, but that will result in more expense and more fines for us. We are now trying to do everything in the world that we can. And I feel sure that after considering the matter you will not favorably report this bill, for it would be an injustice to us.

Mr. STEVENS. Let us find out about that. Suppose Congress should think it was necessary in the interest of the whole country to pass this bill, and that it should operate rather harshly against your lines. Let us see what would happen. Suppose those six cars of stock left Richmond, and this bill were in effect, and you took them down to Rocky Mount; then what would you have to do to comply with this law?

Mr. NEWELL. We would simply have to run a special train, sir.

Mr. STEVENS. You would run six special trains, would you—one with each car of stock?

Mr. NEWELL. That would be the general principle. I do not say that we would do that in every case. We might possibly have some extra trains going, but that would be the principle.

Mr. STEVENS. Could you unite with that stock mixed trains of other merchandise in those six directions and make this time?

Mr. NEWELL. That would necessitate additional service; that is all. Of course, it is entirely practicable to do that, but it is additional service.

Mr. STEVENS. Yes. If you had to render that additional service, what would you do?

Mr. NEWELL. I do not know that I quite understand what you mean.

Mr. STEVENS. Would you raise your rates?

Mr. NEWELL. Oh! I do not suppose we would be allowed to raise the rates. If the rates were commensurate under those conditions, I should say that there would not be any especial objection to doing that.

Mr. STEVENS. If the shippers of stock paid you high enough rates, then, you could do it, could you, without any particular objection?

Mr. NEWELL. I should say yes, sir, on general principles.

Mr. STEVENS. Do you consider that the rates you now get would warrant your doing that?

Mr. NEWELL. No, sir; we do not.

Mr. STEVENS. Then you would try to raise your rates, would you?

Mr. NEWELL. If this bill should become effective, I should say rates should be raised, by all means, to cover the matter.

Mr. STEVENS. Then that would either increase the price of stock to the consumer or decrease the tendency of the farmers to raise stock?

Mr. NEWELL. Yes, sir.

Mr. STEVENS. That would be the effect, would it?

Mr. NEWELL. Evidently.

Mr. STEVENS. How long have you been in the traffic business?

Mr. NEWELL. Thirty-four years.

Mr. STEVENS. Have you watched the course of development of different lines of business along your road?

Mr. NEWELL. Yes, sir; generally.

Mr. STEVENS. If we had such a law as this in effect, what would the tendency be—to increase the raising of stock along your lines, because you gave them a better market and got them to market quicker and in better condition, or to decrease the raising of stock, because you might be obliged to charge them higher rates? What do you think would be the result?

Mr. NEWELL. On account of the peculiar conditions that exist with us I do not know that it would materially affect the business, sir, for the reason that in our country we move animals, like horses and mules, entirely from a commercial standpoint, and cattle are shipped simply to near-by points for slaughter. It certainly would not be any encouragement that I can think of to the shipper.

Mr. STEVENS. Then it would not make much of any difference along your line, would it?

Mr. NEWELL. Not materially.

Mr. WANGER. Is Rocky Mount a feeding point?

Mr. NEWELL. Yes, sir.

Mr. WANGER. You can rest these cattle at that point, then?

Mr. NEWELL. Oh, yes, sir.

Mr. WANGER. Until the connecting train is to depart?

Mr. NEWELL. Yes, sir; they could be rested there all right. But, you see, as a rule, we can get them to destination before the twenty-eight-hour law intervenes—before they need rest.

Mr. WANGER. The entire distance?

Mr. NEWELL. Yes, sir.

Mr. WANGER. This case of the six cars going to six different points was somewhat unusual, was it not?

Mr. NEWELL. No, sir; it is not unusual. We get cars for Norfolk and Richmond and Wilmington and Columbia and Charleston and all of those points.

Mr. WANGER. What I mean is, it is a little unusual that there should be just six cars.

Mr. NEWELL. Oh, that particular number—yes, sir. That was unusual. I simply cite that as an illustration; that is all.

Mr. WANGER. It occasionally happens that there are six cars and they are all for one point, does it not?

Mr. NEWELL. Yes, sir.

Mr. WANGER. That also happens?

Mr. NEWELL. I suppose it would happen; yes, sir. That is reasonable.

Mr. WANGER. That is all.

Mr. NEWELL. I just want to say one other thing. I want to emphasize the fact that the roads in the South give stock special attention in the way of dispatch; and if we should be required to conform to a sixteen-hour minimum, it would work a very great hardship upon us. Shipments of stock that do not average a minimum of 16 miles per day are detained through causes over which the railroad company has no immediate control. If they are detained, it is because of unavoidable conditions or circumstances. Ordinarily we make it. We want to make it; we are trying to make it.

Mr. ADAMSON. You do not have to deal with many full train loads of stock, do you?

Mr. NEWELL. None at all, sir.

STATEMENT OF MR. C. C. PAULDING, ON BEHALF OF THE NEW YORK CENTRAL RAILROAD COMPANY.

Mr. PAULDING. Mr. Chairman, there are gentlemen present here from several of the eastern roads—the Pennsylvania, the New York Central, and other roads—to inform the committee about the conditions on those roads, and how the passage of this bill, if it were passed, would affect them. But, in view of the testimony that has been given to-day, this seems to be largely a western proposition—that is, a proposition applicable chiefly to the railroads west of the Mississippi River. While I do not represent any of those railroads, I am sure that they would like to be heard upon the bill. I will ask, therefore, if a day will be set when the Union Pacific, the Oregon Short Line, and the Chicago and Northwestern, those being the roads which have been mentioned here to-day, can be heard as to how the passage of a bill of this sort would affect them?

Mr. STEVENS. If you can tell us how an act like this would affect your eastern lines, you had better tell us.

Mr. PAULDING. Oh, yes, sir; we have the men here to do it. But I wanted to ask at this point if we would have an opportunity to have the western men here?

Mr. WANGER. We will consider that.

Mr. STEVENS. Hearings are fixed for practically every day next week, so that right now we could not fix any day.

Mr. NEALE. Would you like to hear from some of the eastern railroads—the Pennsylvania, for example?

Mr. STEVENS. I think you had better tell us how such an act as this would operate on your lines.

Mr. STEVENS. We will call Mr. Trump, then.

Mr. ADAMSON. Mr. Chairman, I want to ask one of these gentlemen a question.

Mr. GOODING. I would like to ask the committee whether it will be possible, after the western roads, or any of them, give their testimony for the stock interests of the country, to make other remarks or file a brief with the committee in reply? According to the statement of the gentleman from the Burlington road, it would seem to me that the objections made could be very easily gotten around. The bill could be so drawn and drafted as not to affect these roads. I should like to ask, therefore, if we will be allowed to file at least a brief on the subject?

Mr. STEVENS. Oh, yes; we shall be very glad to have you do so.

Mr. GOODING. I mean after the testimony of the railroad people is all in.

Mr. STEVENS. Oh, yes; but it will be to your interest to put it in speedily, and not delay about it.

Mr. GOODING. Yes.

Mr. ADAMSON. Mr. Chairman, I want to ask one of these lawyers a question; and I would just as soon take a shot at Mr. Paulding as anybody else. If he can not answer it, it will at least serve to bring the matter to the attention of the committee, and perhaps they can answer it in their deliberations.

There are different conditions of traffic in different parts of the country and over different railroads. There are certain roads over which large shipments of cattle move in solid, long trains, and many of them. There are other sections, like the one represented by the gentleman who has just taken his seat—the Atlantic Coast Line—where there is not much cattle; only an occasional car, and sometimes not full cars.

Mr. PAULDING. Yes, sir.

Mr. ADAMSON. Is there any way, without unjust discrimination, in which we can arrange for the accommodation of the business under the different conditions prevailing in those different sections?

Mr. PAULDING. There is no way; no, sir; because the conditions differ so in different parts of the country, and differ so upon the different roads. If we take the Pennsylvania and the New York Central, for instance, as to cattle or live-stock traffic, both of those roads are terminal roads. A very large part of the live-stock traffic over the New York Central is export traffic, and comes through to us. We originate upon the lines of our road very little live stock.

Mr. ADAMSON. Unless you can so shape the law as to accommodate the different sections and roads with proper regard to the different conditions, will it not inevitably result in less accommodation

and higher charges on the part of the roads in the sections where there are only few and small shipments?

Mr. PAULDING. I do not see how it can result otherwise, Judge Adamson; because what would be fair in this regard to a road like the New York Central would not be fair to a road, for instance, west of the Mississippi River, which had a long mileage and few tracks.

Mr. STEVENS. But, Mr. Paulding, could we not give a large jurisdiction to the Interstate Commerce Commission to make operating requirements that might meet the different situations?

Mr. PAULDING. I think, perhaps, if general jurisdiction were given to the Interstate Commerce Commission, Mr. Stevens, without naming in the law any specific minimum, that might remove that objection.

An average minimum of 16 miles an hour means a great deal. If we take a through shipment of live stock over the lines of the New York Central, coming through to Boston for export, for instance, it goes to West Buffalo or to East Buffalo and is fed. From there a jump is made of 300 miles to West Albany, where there is another feeding station. From there another jump is made of 200 miles to Boston, where the stock is delivered for export. But it might be very difficult to average 16 miles an hour from Buffalo to Boston, because of the fact that at Boston there are 13 miles of terminals, and when those cars of stock arrive at the western end of those 13 miles of terminals the delay begins. We might have run the shipment over the main line from Buffalo to West Albany at a rate of 40 miles an hour—which is very often done, I am told, when the trains can use the passenger tracks. We might have run it over the Boston and Albany at a rate of 20 to 25 or 30 miles an hour—a rate which, I am told, is very often reached. But when we get to the terminal at Boston and have those 13 miles of yard to go through—a congested yard at that—it might take twelve hours to get that stock over the 13 miles or the 11 or 12 miles which might be necessary to be added in order to deliver it, on account of the congested condition of the yard and the fact that so many switching movements have to be made. Trains have to be broken up, crews have to be brought out to attend to them, and all the thousand and one things that are necessary in yard operation have to be done. That is where an average would be an unjust thing, sir.

Mr. STEVENS. The point I asked you about was this: Could not some measure be framed giving the Interstate Commerce Commission such general authority that they could make a different rule wherever necessity required?

Mr. PAULDING. Yes, sir; I think a general measure could be framed giving them general authority.

There is one thing I should like to say right here about violations of the present law. The New York Central Railroad has been prosecuted and convicted and fined in a number of cases. In every one of those cases, so far as I am informed, the violation of the twenty-eight-hour law occurred, although the car or cars of stock concerned had been on our line in no instance more than four hours, and in many instances less than an hour, on account of the operation of the law and the way it is drawn.

Mr. ADAMSON. Mr. Paulding, I want to ask you another question of general interest. The representative of the Atlantic Coast Line

was just now asked by Mr. Stevens a question which had in view the ultimate consumer—a gentleman who is very rarely referred to in these days, you know. I want to ask you if there is not a very wide margin between what cattle are worth after both the cattleman and the railroad part with them, and what they bring after the packer and the butcher get through with them—what is charged to the ultimate consumer?

Mr. PAULDING. I know what I pay for the beef, Judge Adamson. That is all I know about it.

Mr. WANGER. Do you think that would be affected by the speed-rate law?

Mr. PAULDING. I should not dare answer as to that, Mr. Wanger.

Mr. ADAMSON. If you could just pool the earnings of the cattleman and the railroad and the packer and the butcher, you might leave the packer and the butcher rich and still raise the profits of the railroad and the farmer.

Mr. PAULDING. You might run up against the Interstate Commerce Commission's law against pooling, though.

Mr. ADAMSON. If you are going to fix up a pooling arrangement, I should like to cover that.

Mr. WANGER. Do you desire to present anybody else?

Mr. NEALE. We should like to present Mr. Trump.

Mr. WANGER. We shall be very glad to hear Mr. Trump.

STATEMENT OF MR. M. TRUMP, GENERAL SUPERINTENDENT OF TRANSPORTATION OF THE PENNSYLVANIA RAILROAD LINES.

Mr. TRUMP. Mr. Chairman, the conditions on the Pennsylvania Railroad are practically the reverse of those stated by Mr. Rice. We originate very little stock, but we distribute quite a lot. Our stock comes to us at Pittsburg, which is a market. The stock sometimes lies there for days before it is sold, and practically starts out from that point as a new shipment. We have from that point regularly arranged stock schedules (one at noon and the other at midnight) running to Philadelphia and to New York. Our time from Pittsburg to Philadelphia is twenty-three hours, including yard delays—an average speed of about 16 miles per hour. The time on our New York trains is twenty-six hours—an average speed of about 17 miles an hour. Those schedules are arranged to suit the markets and to suit the requirements of the stock shippers, and have been varied from time to time to suit their convenience. So that we are in a peculiar position to be able to conform to this proposed bill so far as those through movements are concerned. But the provisions are so general that we would be fined—I will not say 500 times a day, but certainly a number of times per day—with our local movements.

For instance, if one of our connections puts on the receiving track five cars of stock, to go a distance of 8 miles, we must get it there in thirty minutes, and we have not the necessary power and crews and so on available at that place. So, unless we know that that stock is going to arrive there, and get an engine to move it specially from that point for that 8 miles, we are going to be fined \$500. That is where we think uniformity in a law like this is going to cause a great deal of injustice. Our stock is handled as a preference move-

ment. There is nothing handled faster on the road except our passenger trains. But when it comes to this local stock, which, for instance, is going to Baltimore, it must leave the train at Harrisburg. It is distributed along at York and various places. We get small quantities of stock at Buffalo and Erie, which come down on trains which are principally run on fast-freight schedules. They come into Harrisburg, and there they are broken up and distributed. On all such movements as that we could not conform to a 16-mile-per-hour speed, taking in account the difficulty in making our connections. So far as our through movement is concerned, the law would not affect it.

Mr. WANGER. What rate of speed do your fast-freight trains make?

Mr. TRUMP. Our fast freights? They are run practically on the same schedules—17 to 20 miles per hour, including yard delays.

Mr. STAFFORD. Has the Baltimore and Ohio Railroad any faster schedule for fast freight?

Mr. TRUMP. I do not think so. We all make about a third-morning delivery in Chicago, which is our fast merchandise business west-bound, and have a similar service eastbound.

Mr. WANGER. Are there any other questions?

Mr. TRUMP. That is all I have to say.

STATEMENT OF MR. C. W. GALLOWAY, SUPERINTENDENT OF TRANSPORTATION, BALTIMORE AND OHIO RAILROAD.

Mr. GALLOWAY. Mr. Chairman and gentlemen, as I understand this bill, it does not make any provision for whether your railroad is equipped with single track, double track, three tracks, or four tracks. Speaking for the Baltimore and Ohio, I think we distribute more stock than we originate. We do originate some stock through the Shenandoah Valley and through West Virginia. Furthermore, as I understand it, the bill requires an average speed of 16 miles per hour regardless of the conditions under which, from absolute necessity, you must collect that stock. For instance, take the country through the Shenandoah Valley: We will distribute there in connection with the Southern Railway probably 40 cars for stock on a specified day, usually to reach the market on Monday morning. We will start an engine out at the south end to pick up the stock that is loaded on our line, deliver it to the Southern Road, and they will go along and pick up stock on their line. They deliver that train back to us at Strasburg Junction, and we are ready to move it immediately. There is not a single thing on that train but stock, and there is not a single bit of work done but picking up that stock. We take it to Brunswick, where we put it in the train for Baltimore or for the Union Stock Yards. The average speed of that train from Brunswick to Baltimore is a little better than 17 miles per hour. But when we add the length of time it took to collect that stock through the Shenandoah Valley to our total running time we have an average of somewhere around 10 or 12 miles an hour.

The same condition obtains in West Virginia, where we collect cattle from 10 or 12 stations. At times we will arrive at the station with a crew doing nothing but collecting cattle. I have known of instances where the stockman had not arrived, and by the time the crew was ready to go he would turn up with his cattle, after having driven them some 10 or 12 miles and probably having had his own

troubles in getting there. We would wait for him. We would come to the junction of the main line, where we would have a train that would be making 18 miles an hour. If we add the time consumed in picking up that stock to the total running time of our main-line train, we have very materially reduced the average below 16 miles an hour. The same condition would prevail on a special schedule that we have from Chicago to New York, or from Chicago to Baltimore, for export cattle, which would give us an average speed of 18 miles an hour. We would put on that train at the junction point the cattle collected along the branch line, and our average would be reduced. As I understand this bill, that time would be added to the total time the stock was in transit after having been assembled into a train.

Some mention was made of tonnage trains, and I got some enlightenment on that subject that I had never had before, to the effect that a railroad does not care how slowly it moves its trains. Tonnage is all right, and is properly used for slow freight, and I think all well-regulated railroads have a tonnage rating that is automatic in its application as regards the temperature which may exist at the various periods. But when it comes to important freight like stock, and what we call quick-dispatch freight (that is, high-class merchandise), the tonnage rating is not applied in the sense that it is applied to what we call the extra trains or the heavy freight. Our rule has been that we limit a fast freight train to 40 loads. We will run a solid stock train and take 30 loads. But if we are required to fill out a stock train, we fill it out with high-class freight—freight that will stand speed.

Another point where we could not comply with a 16-hour law is in distributing cattle that may go to points south via Potomac Yard, over here at the south end of the Long Bridge. It is 54 miles from Brunswick to Potomac Yard. It would require about six hours to make the run and get through Washington, through the density of the passenger traffic, around through our Alexandria branch, through the Virginia avenue tunnel, and around over the line that feeds the terminal from the south end. Our speed would be less than an average of 16 miles per hour, notwithstanding the fact that we move whenever there is an opportunity on the track to move.

Mr. WANGER. About what would your speed be, under the conditions you have just named, at that point?

Mr. GALLOWAY. Do you mean going south? About 9 miles an hour. That is what the average would be, notwithstanding the fact that we may have run those cattle 30 miles an hour. For 21 miles of the line we would probably run it at 30 miles an hour; but we can not get through these heavy traffic centers at that rate where there are so many trains.

With us stock is next to passenger trains. We do not hesitate, however, if we want to fill that stock train out to a speed that can make the schedule, to fill it out with high-class freight, such as meat or fruit or any high-class merchandise that will stand speed. We are not accustomed to filling it out with rails or heavy freight that we do not desire to run so fast. Of course, there is other traffic that has to move besides cattle. We have lots of things to contend with in operating a railroad. If we only had that one train to operate, I guess we would get probably any speed that you wanted. But we have other things to contend with; and you may get a high speed at

certain points that is reduced by conditions that you can not control at other points.

Mr. STAFFORD. The Baltimore and Ohio is a single-track road, is it not, generally speaking?

Mr. GALLOWAY. The Baltimore and Ohio is a double-track road. We have a double-track road from Philadelphia to Chicago Junction; and about 60 per cent of the Chicago division is double track. The Southwestern line is double track for 389 miles, to Grafton, and then it is a single track, with sections of second track.

Mr. STAFFORD. This bill would be more difficult of enforcement on single-track and partially double-track roads than on the complete double-track and more-track roads?

Mr. GALLOWAY. In my judgment the bill is almost impracticable on a single-track railroad.

Mr. STAFFORD. The roads in the far West and the grain States are largely single-track roads?

Mr. GALLOWAY. Yes, sir. I got the impression to-day that when you went west you found there was not any effort made to move anything. But I was at the coast a few years ago on a limited passenger train on a western line. I had been timing the train, and on one or two sections of the track I found that we had reached a speed of 82 miles an hour. This was on the Denver Limited. To my surprise I passed two stock trains going in the same direction, but on the opposite track. I thought that was pretty fine railroading, although I got the impression to-day that in the West they do not do anything. I think that is trying to get the stock over the road. I imagine that stock must have been running 40 or 50 miles an hour. So, notwithstanding the fact that we get high speed out of the stock trains at certain points, when you come to the average conditions that you can not control it is pretty hard to maintain the limit that this bill provides for. And as I say, on single track I judge it would be almost impracticable, unless you had nothing else to move.

Mr. KENNEDY. Do you think a minimum limit of 10 miles an hour could be maintained?

Mr. GALLOWAY. Yes, sir. I also want to add that the disposition of all operating officers is to move their traffic as rapidly as they can. That is what you measure your efficiency by. The higher average mileage you get, the greater your efficiency is; and you do not get high average mileage by letting trains drag over the road. Some of the testimony that has been offered here has been different from my experience.

Mr. WANGER. Are there any other questions? If not, we are very much obliged to you.

STATEMENT OF MR. G. P. BRADFIELD, OF BUFFALO, N. Y., REPRESENTING THE NEW YORK CENTRAL RAILROAD COMPANY.

Mr. BRADFIELD. Mr. Chairman, Mr. Paulding, of our legal department, seems to have covered pretty thoroughly the matter of how stock is handled on the New York Central. He did not mention, however, the stock that originates on our line. There is very little of it, but it comes from a single-track branch, say, a distance varying from 75 to 100 miles, before it strikes the main line.

Mr. WANGER. What branch is that?

MR. BRADFIELD. That is the Rome, Watertown and Ogdensburg. That is one of them. There is a little coming from what we call the Canandaigua and Batavia branch. There might be a little coming from the Auburn branch, but there is very little of it. There is, however, enough of it so that if we had this 16-miles-an-hour law we would certainly be fined once or twice a week. Those shipments are usually made once or twice a week and are mostly for the local markets.

MR. WANGER. What rate of speed is actually maintained?

MR. BRADFIELD. We are in just about the same fix that these other gentlemen have mentioned. We could not pick up stock on these branch lines and make over 8 or 10 miles an hour with it, because we have very little of it, and on account of the stopping and loading. Oftentimes there have to be two or three cars loaded at one station, and the chutes are so arranged that the shipper can only load about one car, and then he has to wait for the engine of the train to come and place the next car, which, of course, delays the movement of the stock that is already picked up. I have known of instances where the engine would have to wait for the loading and for what they call the cooping of the cars. There would be, perhaps, sheep and hogs and calves all on the same cars—small-lot shipments; and it would all come under the head of stock, as I take it.

With our through stock, such as is delivered to us by our connections, we make fairly good time. We aim to make 16 miles an hour. We do not always succeed in doing it. We sometimes make quite a little better than that. But there is a lot of stock delivered to within, say, 7 or 8 miles of our stock yards. We can not move that from the point where it is delivered to us to the yards short of anywhere from one to three hours, on account of the congested conditions in that territory. Further than that, it may come to us at a time when we are not prepared to handle it right on the spot. We have to send an engine 7 or 8 miles to it. We will get two cars, say, at 10 o'clock in the morning; we may get two cars at 11 o'clock in the morning; perhaps one or two cars at 2 o'clock the next noon, and so on. But that stock, as a rule, goes to the yards, is watered and fed, and is what is called "sale" stock. It is usually resold there, and then reshipped later—maybe not for two or three days. Those are the cases, I think, that Mr. Paulding had reference to, where we are fined for exceeding the twenty-eight-hour limit. The time was practically up when the stock was delivered to us, but we could not get it to the yard short of two or three hours—just enough to make us responsible for it.

I do not know of anything else that I can say to you, unless there is some question you would like to ask me about it. I do think this, though, from an operating standpoint: I have been in the operating service for something over thirty years, and I do not believe it would be wise for any law to be passed directing the railroad companies as to what speed they should average with their traffic, either stock or any other traffic. I may be entirely wrong, but that is my judgment. It means maintaining an average speed of 16 miles an hour, and I know this to be a fact, because we are practicing it practically every day. We have to run our stock trains 35, 40, or 45 miles an hour wherever we can, because there are so many places where we can not run them fast, and there are so many delays that have already

been mentioned, such as coaling your engine en route, watering your engine, changing engine and crews, getting through the congested yards, and getting down over territory like the Hudson division of the New York Central, where sometimes they lie for two and three and four hours on a side track waiting for high-class passenger trains. They could not make 10 miles an hour to save them down there.

Mr. KNOWLAND. Is it detrimental to stock to run faster than 30 or 40 miles an hour?

Mr. BRADFIELD. I should say that would depend somewhat upon the kind of track you have. If you have a good, smooth rail and a good roadbed, I do not think we hurt the stock in running 30 or 40 miles an hour. We seldom do that unless we do it on our passenger tracks. We would not like to go at that speed on the freight tracks, because they are not as smooth-running tracks as the others.

Mr. KENNEDY. It would depend a good deal on the care with which the engineer started and stopped his train?

Mr. BRADFIELD. Yes, sir; especially stopping. He can not start very fast, anyhow. He might jerk the first car or two, but he has to start off slowly. But he can stop pretty quickly sometimes.

Mr. WANGER. Are there any questions? That is all, Mr. Bradfield.

STATEMENT OF MR. J. C. TUCKER, OF NEW YORK CITY, REPRESENTING THE ERIE RAILROAD.

Mr. TUCKER. Mr. Chairman, the Erie Railroad is peculiarly situated, so far as this bill is concerned. Practically all of the stock we handle originates on the railroad in small lots. It is gathered in from main-line divisions and from side-line divisions, of which there are a number. The method of collecting the stock on the side-line and main-line divisions is to pick the stock up in local trains—pick-up trains or way-freight trains—and assemble it at the terminal for a through main-line train. The stock delivered from connections is, of course, sometimes, and in fact frequently, delivered when we have no through main-line trains upon which to take it. However, the main object is to assemble the local stock as it is loaded to a terminal point, where it can be made up in a through train for New York, that being the principal point of destination.

The operating conditions are these: We have approximately 1,000 miles of road from Chicago to New York. Approximately 500 miles of that distance is single track. Of course it passes through a rather rolling country where the grades are not bad, and yet they are not favorable. We have many miles of 1 per cent grades or better. The division terminals between Chicago and New York are occasionally congested, and there are many operating reasons on the long haul why we could not consistently maintain an average minimum rate of speed of 16 miles per hour. We are doing everything possible to live up to the strict interpretation of the present law. We are endeavoring to move our stock with promptness, and the stock is generally moved in what we call our "fast-freight trains" from the terminal points. We rarely run a stock train; very rarely. Almost all of the shipments of stock in the manifest or fast-freight trains are carried in from 5 to 7 or 8 cars. Occasionally there are more than that, possibly 12 or 15 cars. But rarely, as I said before, do we have a full train of stock from Chicago to New York, or from Buffalo to New York.

Mr. WANGER. These 5 to 15 cars are joined with how many other cars to make a train load?

Mr. TUCKER. The rating of our manifest trains of course varies on the 12 main-line divisions between Chicago and New York on account of the grades. On some divisions we will handle more than on others. For illustration: In the West we will probably haul on the manifest trains 33 to 35 or 38 or 40 cars where the grades are favorable. On the divisions where the grades are not favorable we will handle from 32 to 33 or 34 cars. On the New York division, from Port Jervis to the Jersey City terminal, of course we have heavy passenger traffic all through the territory; and it frequently occurs that our manifest trains which have a few cars of stock in them are delayed on account of the large number of passenger trains, particularly during the morning rush hours. However, we endeavor to keep a very close check on all of those trains approaching the terminal. We have frequently cut the tonnage down, say, as far back as 200 miles out of the terminals, so that we could make the market, for illustration; and things of that kind are done. It depends entirely upon the conditions. But it would be almost impossible for us to maintain a fixed minimum rate of speed under our operating conditions of so much single track, etc.

As I said before, we are doing everything we can to comply with the present law; and, so far as I personally know, we have not had any complaints of any consequence as to the manner of the handling of the stock.

Mr. STAFFORD. What is the average time of your through freight trains from New York to Chicago?

Mr. TUCKER. About sixty hours; from fifty-seven to sixty hours. While we do make on our manifest trains from 12 to 15 and 16 miles per hour (and of course we increase that speed where we can, where the conditions are such that we can), we have to run faster, and in fact as high as 40 miles an hour, to try to get the train to its final destination, which is New York.

Mr. PAULDING. That is all we have to present this afternoon, Mr. Chairman.

(The committee thereupon adjourned until to-morrow, Saturday, February 12, 1910, at 10 o'clock a. m.)

(The chairman presented, to be inserted as a part of the record of the hearing, the following letter from the Secretary of Agriculture and copies of certain state laws in relation to the transportation of live stock:)

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., January 31, 1910.

HON. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

SIR: Receipt is acknowledged of your letter of January 25, 1910, inclosing a copy of H. R. 19041, entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation from one State or Territory, or the District of Columbia, into or through another State or Territory, or the District of Columbia and repealing sections 4386, 4387, 4388, 4389, and 4390 of the United

States Revised Statutes," and requesting the views of this department regarding the bill.

If enacted into law, the bill will require, in effect:

1. That common carriers subject to the present statute shall maintain on all trains transporting live stock an average minimum speed of not less than 16 miles per hour. (Sec. 3.)

2. That if, after a hearing, the Interstate Commerce Commission should decide that any carrier can not maintain a rate of not less than 16 miles per hour on stock trains, owing to adverse physical conditions, the said carrier may thereafter maintain on stock trains a minimum rate of not less than 12 miles per hour, over that part of its system on which the adverse physical conditions obtain. (Sec. 4.)

3. That any common carrier subject to the act which fails to maintain a minimum speed of 16 miles per hour, as provided in section 3, or a minimum speed of 12 miles per hour, as provided in section 4, shall be liable upon conviction, for each shipment so delayed, to a penalty of not less than \$100 or more than \$500. (Sec. 5.)

4. That the penalties therein created shall be recovered by civil action in the circuit or district court holden in the district where the offense was committed. (Sec. 6.)

For your information in this connection I inclose a copy of the present act in the form it would assume should this bill become law.

As you are perhaps aware, the original act of Congress to prevent cruelty to animals by common carriers in the course of interstate transportation was passed by the Forty-second Congress, third session, and approved by the President on March 3, 1873 (17 Stat., 584). This act was incorporated in the Revised Statutes of the United States, first edition, as sections 4386 to 4390, inclusive. The present statute, commonly known as the "twenty-eight-hour law," supplemented the sections of the Revised Statutes, and became effective on June 29, 1906 (34 Stat., 607). Improved by Congress from time to time, as defects became apparent in its practical enforcement, the act to-day represents one of the most humane and effective pieces of federal legislation on the statute books.

I had not had occasion to consider the bill you sent me. It was drafted, substantially in its present form, by the solicitor of the department, in response to the request of the American Humane Association and the National Wool Growers' Association. At the time the draft was in preparation a very careful analysis was made of between seven and eight hundred alleged violations of the twenty-eight-hour law, then awaiting trial with a view of determining the average rate of speed maintained on stock trains. In a group of 42 cases against one road the average running time for such trains varied from 4 miles an hour for a haul of 364 miles, to 21 miles per hour for a haul of 977 miles, a very good rate of speed for a stock train. The average rate of speed maintained in all these cases was 9.5 miles per hour. In a group of 24 cases against another road the average speed maintained was 12.3 miles per hour, the actual rate varying from 1.8 miles per hour for a haul of 57.7 miles to 14 miles per hour for a haul of 545 miles. An examination of 22 cases against a third road shows that it maintained the rate of 5.4 miles per hour on an average. One of the big live stock carrying roads, at that time a defendant in 28 alleged violations of the act, maintained in these instances a speed of 3 miles per hour for a haul of 150 miles and 12.8 miles per hour for a haul of 480 miles, the average speed being 10 miles per hour. One of the most persistent violators of the law was then a defendant in 122 cases. It maintained an average running time of from 1.9 miles per hour for a haul of 198.5 miles to 15.6 miles per hour for a haul of 613.2 miles. Three other roads maintained an average of 6.4 miles per hour in 14 cases, 11 miles per hour in 15 cases, and 9.7 miles per hour in 166 cases. The average running time of stock trains in the seven or eight hundred cases examined was 9.4 miles per hour.

Recently there has been a very gratifying improvement in the conditions attending the transportation of live stock; the railroad companies generally are making sincere efforts to comply with the present statute. Nevertheless, while the law as it now stands is being substantially obeyed, and while neither pains nor expense is being spared in its enforcement, it is believed that more adequate protection would be afforded live stock in interstate commerce if a provision were incorporated in the act requiring carriers to maintain a reasonable minimum speed on all stock trains. It often happens, at the present time, that railroad companies comply rather with the letter of the statute than with the spirit; by unloading live stock frequently they keep within the law, but much

suffering is thereby inflicted upon the animals, to say nothing of the additional expense to the shippers, all of which could be avoided if carriers were required to move live stock more rapidly to destination.

The principle upon which the present statute rests is certainly sound—the principle that dumb brutes in a civilized nation should receive due care from common carriers in course of transportation. It is inherently right; it benefits the live-stock shipper and the consumer; and whatever benefits the shipper and the consumer must in the long run help the railroad company. The enactment of this bill would round out the present statute and emphasize the desire of Congress, as expressed therein, that live stock in transit should be properly handled; it would insure improved service for the shipper, and the consumer could be satisfied that live stock would reach the market in better condition. It is the logical development of the purpose with which the original act was passed. Then, too, as you have observed, provision is made that an opportunity for a hearing shall be afforded any carrier operating under conditions which apparently make it impossible to maintain the minimum speed required, and that the Interstate Commerce Commission shall have the power to reduce the minimum rate of 16 miles per hour, if it appear that, in fact, a given carrier is unable to maintain that speed.

Nor could it be said that Congress would be very far in advance of the state legislatures in enacting such a measure. The act of March 19, 1903 (chap. 144, Laws of North Dakota, 1903, p. 195), provides in effect that common carriers engaged in the transportation of live stock shall maintain on all stock trains within the State an average minimum speed of not less than 20 miles per hour. The act of April 4, 1905 (chap. 5, Laws of Nebraska, p. 57), provides in effect that it shall be the duty of stockyards companies to unload live stock within one and one-half hours from the time of arrival at the tracks connecting with the yards and the tender of the live stock to the company. Section 10606 (stock shipments, rate of speed) of the act of March 29, 1909 (Laws of Nebraska, 1909, chap. 96, p. 403), provides in effect that common carriers shall transport live stock at a minimum speed of not less than 18 miles per hour. The supreme court of that State, in *Cram v. Chicago, Burlington and Quincy Railroad Company* (122 N. W., 31), has declared this statute constitutional. The act of March 7, 1907 (chap. 276, Laws of Kansas, 1907, p. 448), provides in effect that common carriers shall transport live stock at a minimum speed of not less than 15 miles per hour. The act of April 10, 1907 (chap. 115, Laws of Iowa, 1907, p. 119), provides in effect that common carriers shall move cars of live stock at the highest speed consistent with reasonable safety, and that the board of railroad commissioners shall determine the speed at which live stock shall be moved. You will recall that the act of May 17, 1907 (Laws of Illinois, 1907, p. 264), provides in effect that live stock shall not be confined by a common carrier in any car longer than thirty-six consecutive hours, at the expiration of which time they shall be fed and watered. A California statute (Laws of 1905, chap. 512) prescribes thirty-six hours as the maximum period of confinement of live stock by carriers without unloading for food, water, and rest; the period of rest must be at least ten consecutive hours. The act of 1905 (Laws of Florida, chap. 51) makes twenty-eight hours the maximum period of confinement of live stock by carriers, and also provides a maximum of three hours for detention in the cars at destination. For your information I inclose copies of the acts or parts of acts mentioned.

As showing what has been accomplished under the existing statute, and as supplementing this letter in reference to the minimum speed measure, I inclose marked copies of the Report of the Solicitor for 1907, 1908, and 1909.

Very respectfully,

JAMES WILSON, *Secretary*.

[Laws of North Dakota, 1903, p. 195—An act regulating transportation of live stock.]

1. *Minimum speed to be maintained.*—It shall be the duty of every railroad, railroad corporation, railway company, express company, car company, and of every common carrier other than by water, by whatever name it may be called or by whomsoever operated and which is wholly or in part engaged in the transportation of any kind of live stock by railroad within or to or from any point in this State, to transport any and all such live stock so by it being transported, with the utmost diligence, and to maintain within this State in all trains so transporting any such live stock an average minimum rate of speed of not less than twenty miles per hour from the time any such live stock is

loaded upon or into its cars until such train reaches its destination, deducting only in the computation of such average minimum rate of speed such reasonable time as any such live stock may be necessarily delayed in unloading to feed, water, and rest and in feeding, watering, and resting and in reloading.

2. *Penalty for violation.*—Every railroad, railroad corporation, railway company, express company, car company, or common carrier other than by water, and the person or persons operating such common carrier as receiver, lessee, or trustee violating any of the provisions of section 1 of this act, shall be liable to the owner or owners of any live stock so being transported, in the sum of five dollars per car for each and every hour any car, wholly or in part loaded with any live stock, is detained beyond the time provided in said section 1 of this act, and, in addition thereto, every such railroad, railroad corporation, railroad company, express company, car company, or common carrier, or the person or persons operating any such common carrier as receiver, lessee, or trustee, shall be liable to such owner or owners of said live stock for all damages sustained on account of any such delay, to be collected in an action by such owner or owners in any court of competent jurisdiction in this State.

[Laws of Nebraska, 1905, p. 57.—An act to regulate the time consumed in unloading and yarding the live stock by stock-yard companies or persons.]

SECTION 1. *Unloading cars—time.*—It shall be the duty of all persons, corporations, or associations engaged in the business of operating a stock yard or yards, in the State of Nebraska, or receiving live stock for the purpose of being fed or sold at said yard or yards, to handle all live stock tendered at said stock yard by any railroad company with such expedition that the time consumed in switching and unloading and placing said stock in said yards shall not exceed one and one-half hours from the time of the arrival of the same at the tracks connecting with said yard and tender the same to said stock yard.

SEC. 2. *Penalty.*—Any person, corporation, or association violating the provisions of this act shall pay to the owner of said stock two and one-half dollars per car for each one-half hour delay or fraction thereof in excess of the one and one-half hours herein provided for placing said stock in said yard. Said sum to be collected as other debts are collected.

[Acts and resolutions of the State of Iowa, 1907, p. 119.—An act to define the duty of common carriers, etc.]

SECTION 1. *Duty of common carriers of freight.*—That it is hereby made the duty of all common carriers of freight within this State to move cars of live stock at the highest practicable speed consistent with reasonable safety and the reasonable movement of its general traffic.

SEC. 2. *Railroad commissioners to prescribe speed.*—In order to enforce the duty prescribed in section one, the board of railroad commissioners shall immediately and from time to time investigate the practice of the common carriers with respect to the movement of live stock; and if it ascertains at any time that the common carriers or any of them are not moving cars of live stock with the proper speed, then, upon notice to any such common carrier or carriers, the said board shall prescribe the speed at which and the conditions under which cars of live stock shall be moved within this State by any such carrier or carriers. The order shall specify the time at which it shall go into effect, which shall be as soon as, in the judgment of the board, the carrier or carriers affected can, with reasonable diligence, readjust its or their timetables. The power to prescribe speed and determine conditions for the movement of cars of live stock within this State is hereby expressly conferred upon the said board of railroad commissioners.

[Laws of Kansas, 1907, ch. 276, p. 448.—Concerning transportation of live stock.—An act to prevent delays, etc.]

SECTION 1. That all persons, firms, or corporations operating railroads as common carriers shall transport all live stock received by them for transportation within this State without delay, and shall transport the same in a period of time not less than one hour for each fifteen miles of the entire distance over which said shipment of stock is transported by rail within this State, unless prevented by unavoidable cause; provided the time consumed by stops for watering and feeding, occasioned by the requirements of law or the order of the shipper, shall not be considered a part of the time in which shipments are required to be made.

SEC. 2. Any common carrier which fails or refuses to transport such live stock at the rate of not less than fifteen miles per hour, as herein provided, shall be liable for all damages which may be sustained by any person on that account, which damages shall include the loss resulting from a depreciation on the market, shrinkage in weight of such live stock, the loss in time of shipper, his agent, or employee, and any extra expense occasioned thereby, and all other damages which are the approximate result of such failure, together with the costs in case suit is brought to recover the same, and a reasonable attorney's fee, fixed by the court on the trial of said cause. All other statutory and common-law remedies, in addition to the remedies provided herein, are hereby preserved to the shippers.

[Laws of Illinois, 1907, p. 264. An act to amend * * * criminal jurisprudence.]

SECTION 1. No. 51. No railroad or other common carrier in the carrying or transportation of any cattle, sheep, swine, or other animals shall allow the same to be confined in any car more than thirty-six consecutive hours, unless delayed by storm or accident, when they shall be so fed and watered as soon after the expiration of such time as may reasonably be done. When so unloaded they shall be properly fed, watered, and sheltered during such rest by the owner, consignee, or person in custody thereof, and in case of their default, then by the railroad company transporting them, at the expense of said owner, consignee, or person in custody of the same; and such company shall have a lien upon the animals until the same is paid. A violation of this section shall subject the offender to a fine of not less than three dollars nor more than two hundred dollars.

[Laws of Nebraska, 1909, ch. 96, p. 403.]

SECTION 10606. *Stock shipments—Rate of speed.*—It is hereby declared and made the duty of each corporation, individual, or association of individuals, operating any railroad as a public carrier of freight in the State of Nebraska, in transporting live stock from one point to another in said State, in carload lots, in consideration of the freight charges paid therefor, to run their train conveying the same at a rate of speed so that the time consumed in said journey from the initial point of receiving said stock to the point of feeding or destination shall not exceed one hour for each eighteen miles traveled, including the time of stops at stations or other points: *Provided*, In cases where the initial point is not a division station and on all branch lines not exceeding one hundred and twenty-five miles in length the rate of speed shall be such that not more than one hour shall be consumed in traversing each fourteen miles of the distance, including the time of stops at stations or other points, from the initial point to first division station or other said branches. The time consumed in picking up and setting out, loading or unloading stock at stations shall not be included in the time required, as provided in this schedule: *Provided further*, That upon branch lines not exceeding one hundred and twenty-five miles in length live stock of less than six cars in one consignment, each railroad company in this State may select and designate three days in each week as stock-shipping days and publish and make public the days so designated, and after giving ten days' notice of the days so selected and designated shall be required upon its branch lines to conform to the schedule in this act provided, only upon said days so designated as stock-shipping days.

[Statutes of California, 1905, ch. 512, p. 672.—An act to add a new section to the penal code * * * relating to transporting cattle, * * *.]

SECTION 1, 369b. Any officer, agent, or conductor of any company or person operating any railroad in this State, who, in carrying and transporting cattle, sheep, or swine in carload lots, confines the same in cars for a longer period than thirty-six consecutive hours, without unloading for rest, water, and feeding, for a period of at least ten consecutive hours, is guilty of a misdemeanor. In estimating such time of confinement, the period during which the animals have been confined without such rest on connecting roads from which they are received, must be computed. In case the owner or person in charge of such animals refuses or neglects to pay for the care and feed of animals so rested, the company or person operating such railroad may charge the expense thereof to the owner or consignee and retain a lien upon the animals therefor until the same is paid.

[Laws of Florida, 1905, ch. 51, p. 102.—An act to regulate the transportation of live stock and to provide penalties for the violation thereof.]

SECTION. 1. That from and after the passage of this act, it shall be unlawful for any railway or other transportation company doing business in the State of Florida, to transport within the boundaries of the State of Florida, any cattle, hogs, or sheep, shipped from any point in such State to another point in such State, unless the same be transported in properly constructed cattle cars, which said cars shall be cleeted and provided with suitable slatted doors, as is usual in such properly constructed cars.

SEC. 2. All transportation companies which shall transport such live stock within the boundaries of the State of Florida, shall unload the same for feed and water at least once in every twenty-eight hours, and upon arrival at the destination of the aforesaid cars, said live stock shall be unloaded immediately by the company so transporting same, and no such car or cars loaded with live stock shall be kept standing on tracks of said railroad at said destination for a longer period than three hours before such live stock is unloaded: *Provided*, That such detention on tracks shall in no case result in preventing the unloading of stock once in every period of twenty-eight hours aforesaid.

SEC. 3. The transportation companies transporting live stock in the State of Florida shall be entitled to charge, as an extra compensation, the actual amount expended by them for feed and water of the aforesaid live stock while en route from the point of shipment to destination.

SEC. 4. All companies transporting live stock within the boundaries of the State of Florida shall provide for such transportation of such live stock properly constructed cars, as above set forth, of not less than thirty-four feet in length, and the railroad commission shall prescribe the minimum carload cars of such length.

SEC. 5. The railroad commission of the State of Florida shall have full jurisdiction of the provisions of this act, and enforce the provisions thereof, and make such rules and regulations governing such traffic as to them may seem meet.

SEC. 6. All transportation companies violating any of the provisions of this act, shall be subject to a fine of not over one thousand dollars for violation of any of the foregoing provisions: *Provided, however*, That the provisions of this section shall not apply to any violation of this act in which the delay or default was caused by accident or providential hindrance.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XVI

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, February 12, 1910.

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. The committee will be in order. You may proceed, Senator.

STATEMENT OF HON. CHARLES J. FAULKNER, OF WASHINGTON, D. C.

Mr. FAULKNER. Mr. Chairman and gentlemen, I desire to submit a very brief statement in reference to H. R. 3064, known as "General Gordon's bill," in reference to claims against carriers.

I desire to call the attention of the committee to the language of the first section of that bill:

That all railroads, transportation companies, and other common carriers engaged in interstate commerce are required, and it is hereby made their duty, to acknowledge within ten days receipt of all claims which are presented or filed with said railroad or common carriers for overcharges on freight, or for loss, damage, or injury to same while in the possession of said carrier or connecting lines; said receipt to specify the number of said claim and date filed.

It seems to me that the first clause of that first section clearly brings it within the opinion of the Supreme Court in the employers' liability case, and renders the bill clearly unconstitutional for the reason that it applies to all railroads, and it applies to all claims upon railroads engaged in interstate commerce. It does not limit it, as required under the decision in that case (207 U. S., p. 463), to the interstate business of an interstate road, but embraces all claims against roads that are engaged in interstate commerce, whether that business should be intrastate or whether it should be interstate; and the blending of the two is the vice found in the employers' liability act to which I have referred in 207 U. S. It appears, therefore, that provision is clearly unconstitutional.

I think the further provision in the bill—that all claims against such railroads, whether they involve the business of intrastate carriers or interstate carriers—come within its provisions. It makes the carriers subject to the liabilities imposed by this statute, and refers to the first section of the bill as descriptive of the carrier embraced in the second section and renders the act unconstitutional.

The CHAIRMAN. As I understand you now, you are aiming to show that, so far as it relates to intrastate business, it is beyond the power of Congress?

Mr. FAULKNER. It is beyond the power of Congress; and the blending of the two in this way in the same section comes within the vice suggested and the construction used in passing upon the employers' liability bill.

The CHAIRMAN. You must remember that bill did not go through this committee.

Mr. FAULKNER. I am not discussing, Mr. Chairman, where the fault may rest with reference to the unconstitutionality of the employers' liability bill, but simply the principles adjudicated by the court in reference to that particular measure.

Further, Mr. Chairman, I recognize that the objection to the constitutionality of the first section of this bill could be obviated by amendments that would bring it within the terms of that decision, and consequently I thought it was only my duty, acting here as an attorney representing certain carriers, to call your attention to the unconstitutional feature of that section, so that if you desire to make any amendment to bring it within the decision as laid down by the Supreme Court you can do so.

But the next vice, which is in the second section of this bill, is one that is not the subject of amendment. The second section provides—

That said railroads and common carriers are also required, and it is made their duty, to pay all just and lawful claims within ninety days from the date of filing same with said railroads and common carriers, and failing so to do they shall be liable to the penalties hereinafter imposed.

The vice found in this section it is not within the power of Congress under any circumstances to remedy. It can not be remedied even under what you designate the police power, if you possess it, under the decision of the Supreme Court, nor could you remedy it by making a classification as provided for by this bill, for such classification has been denounced by the Supreme Court in similar attempts made by States to impose penalties upon carriers for failure to pay such claims within a given time. That question is so fully discussed in the case of the Gulf, Colorado and Santa Fe Railroad Company *v.* Ellis that it is hardly necessary now to dwell upon it.

The CHAIRMAN. Where is that?

Mr. FAULKNER. Page 150.

Mr. STAFFORD. Give us the volume.

Mr. FAULKNER. United States 165, page 150. The examination of that case will also show two things—that the Supreme Court held the Texas statute void which provided for the collection of a claim under \$50 with the addition of attorney's fees and penalties, should the railroad not pay promptly, on two grounds: First, that the classification made by the statute of a carrier or railroad from other citizens of the State was an unreasonable and improper classification for this purpose; and, secondly, that it was not in accordance with other provisions of the fourteenth amendment in regard to equality or due process of law. The latter view controls Congress under the fifth amendment as it affects the State under the fourteenth amendment. The decision is as applicable, therefore, to the powers of Congress under the due-process clause of the fifth amendment as it was applicable under the fourteenth amendment to the prohibition upon the States.

I suppose you gentlemen are familiar with the facts of that case, but I think it may be wise to recall it to your minds before we pro-

ceed to discuss it. The first section of the Texas statute referred to is the section that the court passed upon:

That after the time when this act shall take effect any person in this State having a valid bona fide claim for personal services rendered or labor done, or for damages, or for overcharges on freight, or claims for stock killed or injured by the train of any railway company, provided that such claims for stock killed or injured shall be presented to the agent of the company nearest to the point where such stock was killed or injured, against any railway corporation operating a railroad in this State, and the amount of such claim does not exceed fifty dollars, may present the claim, verified by his affidavit, for payment to such corporation by filing it with any station agent of such corporation in any county where suit may be instituted for the same, and if, at the expiration of thirty days after such presentation, such claim has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such corporation in such court, or any court to which the suit may have been appealed, he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto all reasonable attorney's fees, provided he has an attorney employed in his case, not to exceed ten dollars, to be assessed and awarded by the court or jury trying the issue.

Now, that was a case involving but \$10.

Mr. KENNEDY. That would clearly be unconstitutional for this reason, that it gives that remedy only to citizens of the State of Texas.

Mr. FAULKNER. This is a state law, and it could not go beyond that.

Mr. KENNEDY. It limits that procedure to citizens of Texas, and the Constitution of the United States provides that the citizens of all States shall have the same rights within a State.

Mr. FAULKNER. The construction of that section was that any person entering into a contract or suffering a loss in the State of Texas would come under it, whether he was a citizen of the State of Texas or a citizen of any other State of the Union. I think that would clearly be the construction. But whether that was the right construction or not that I have suggested, that question did not arise in the Supreme Court. They passed upon it entirely upon the merits of the propositions. Mr. Justice Brewer delivered the opinion of the court in this case, given on page 153. He uses this language:

They are not treated as other debtors, or equally with other debtors. They can not appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms.

There is the important proposition that the court lays down.

They must pay attorney's fees if wrong; they do not recover any if right, while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute.

It is true the amount of the attorney's fee which may be charged is small, but if the State has the power to thus mulct them in a small amount it has equal power to do so in a larger sum.

Then the opinion goes on:

But it is said that it is not within the scope of the fourteenth amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true, * * * yet it is equally true that such classification can not be made arbitrarily. The State may not say that all

white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

Further on he says:

It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations. Thus the legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon stature or color of the hair.

And further on:

Such a provision would bear a reasonable relation to the delinquency of the debtor, and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts while another is permitted to become in like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other.

If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads, of all corporations, are selected to bear this penalty. The rule of equality is ignored.

It may be said that certain corporations are chartered for charitable, educational, or religious purposes, and abundant reason for not visiting them with a penalty for the nonpayment of debts is found in the fact that their chartered privileges are not given for pecuniary profit. But the penalty is not imposed upon all business corporations all chartered for the purpose of private gain. The banking corporations, the manufacturing corporations, and others like them are exempt. Further, the penalty is imposed not upon all corporations charged with the quasi public duty of transportation, but only upon those charged with a particular form of that duty. So the classification is not based on any idea of special privilege by way of incorporation, nor of special privileges given thereby for purposes of private gain, nor even of such privileges granted for the discharge of one general class of public duties.

But if the classification is not based upon the idea of special privileges, can it be sustained upon the basis of the business in which the corporations to be punished are engaged?

It seems to me, Mr. Chairman, it is the purpose of the court in this case to meet every conceivable argument.

That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the legislature, in the exercise of its police powers, may justly require many things to be done by them in order to secure life and property. Fencing of railroad tracks, use of safety couplers, and a multitude of other things easily suggest themselves. And any classification for the imposition of such special duties—duties arising out of the peculiar business in which they are engaged—is a just classification, and not one within the prohibition of the fourteenth amendment.

Then he says:

And whether it enforces it by penalties in the way of fines coming to the State, or by double damages to a party injured, is immaterial. It is all done in the exercise of the police power of the State and with a view to enforce just and reasonable police regulations—

Referring back to the safety-appliance laws and regulations, which they had the right to do.

The CHAIRMAN. Of course, this is not a new matter, and this decision has been read to the committee before. That is not saying

that it shall not be read again, because we can not have too much law. But I would like to make this suggestion to you, so that you can think it over. When we had similar bills to the one now introduced by General Gordon, I think it was the unanimous opinion of the committee at that time that the bill would be unconstitutional if enacted under this decision. Since that time, however, we have enacted the Hepburn law and made very severe penalties on railroads which did not charge the correct tariff rate. Is it not perfectly within our power to provide a penalty against the railroad which makes an overcharge for freight and does not return that overcharge within a certain specified time?

Mr. FAULKNER. Mr. Chairman, that is one view of the matter that suggested itself to me, but it is one that I thought was so foreign to the measure presented to this committee here that I thought it was advisable that I should not express an opinion on it one way or the other.

The CHAIRMAN. I know. But it seems to me very pertinent in connection with the proposition here, because we have not in contemplation here the enactment of separate bills, although we are having hearings upon a whole lot of these bills and reporting a large number of our bills; but we are considering the general subject with a possible view to adding to a general bill a provision sought to be covered by these special bills.

Mr. ADAMSON. We are not bound by the text of any bill. We have the whole field to work in.

Mr. FAULKNER. I understand that fully. My purpose was simply to discuss this particular bill and the theory upon which it was prepared.

The other provision to which you referred is now the law. That law has been put in practical operation, and no contest of its provision has been made.

The CHAIRMAN. I know. But here is a law which makes a penalty upon a railroad if it does take a higher freight rate than the lawful rate. I suppose no one will contend that if that is done by error or accident the railroad company can be penalized under the penalty provision of the Elkins or Hepburn law. But is it not perfectly feasible for us to provide that where they discover in the auditor's office as a matter of fact that there is an overcharge, they shall refund that, as they now admit very freely that if there is an undercharge they have to proceed to collect it, although the cost of collecting may be many times the amount of the undercharge.

Mr. FAULKNER. No, sir. If you insist upon an answer I will say that the principle of this bill is entirely different from the question you suggest to me to answer. The one is that you impose a penalty upon the carrier for claiming an undue charge for performing the duty prescribed by statute, which Congress, you assume, has the constitutional power to impose upon that carrier. If so, then you have a right to impose the penalty for the failure to perform the duty required of it by the Government. But this is a case in which you segregate the carriers of the country on the question, not of enforcing some necessary requirements imposed by the statute in reference to the carrying of interstate commerce at all, but you make a distinction here as to this class of debtors from any other class of debtors throughout the entire country.

Now there is the vice of the principle of this bill, no matter in what form you put it, if that is the purpose. That is the decision of the court and it rests that decision on that question alone. If the purpose of the act is to segregate the carriers as a particular class of debtors and impose penalties upon them, it is taking their property without due process of law.

Mr. ADAMSON. But, Senator, right there, I would like to call your attention to this, that we are not considering this as an ordinary case of debtor and creditor, but we are treating this as one of the practices of a carrier engaged in interstate commerce as to charges, and the correction of errors made in charges.

Mr. FAULKNER. No, sir; it can not be so classed. It is not the relation between the shipper and the carrier as to overcharge, but a simple question of indebtedness. This bill does not apply solely to the question of even overcharges, errors in rate or otherwise. It applies to the destruction of or loss of property under the bill.

Mr. ADAMSON. Senator, when that carrier makes an overcharge it violates the law.

Mr. FAULKNER. The law can then impose a penalty upon it for it.

Mr. ADAMSON. It is one of the practices that we are trying to regulate and control in commerce, and if the carrier violates the law it seems to me it is perfectly competent for us in a regulation to provide that that practice is made perfect in that particular.

Mr. FAULKNER. You have provided for that in the general law, with a penalty.

Mr. KENNEDY. Is not the patron who pays more than the legal rate violating the law also?

Mr. FAULKNER. If he does so knowingly; yes, sir.

Mr. KENNEDY. Then there can be no contractual relation between the two parties in that transaction. The money could not be recovered in a suit for debt.

Mr. FAULKNER. We are assuming that he has not done it knowingly, and he has a right to recover back. If there is an overcharge by a bill of lading or a through bill of lading on the carrier's road, there is an error in the rate. This decision has been clearly affirmed in 174 United States, 97, after full consideration.

Mr. ADAMSON. If we provide that if a carrier makes an overcharge and fails to correct that overcharge within a certain number of days he must suffer a penalty, what is the reason that is not valid as regulating a practice of the common carrier?

Mr. FAULKNER. I am not contending that the interstate commerce act is not constitutional—that imposing a penalty upon the carrier for not obeying a constitutional requirement of that act in reference to the question of giving an accurate rate according to the schedule. That is one thing. That is not the segregation of the railroads or making them occupy a different attitude as debtors from other corporations or individuals in the United States.

Mr. ADAMSON. They are segregated in a class as a collaborer to run this Government.

Mr. FAULKNER. They are segregated in many ways by Congress.

Mr. ADAMSON. All that I suggest is that we put into the law the additional language, that if they fail to correct the overcharge in a given time they will be subject to a penalty.

Mr. FAULKNER. Mr. Chairman, the case which affirms the Ellis case is the *Santa Fe Railroad v. Matthews* (174 U. S., 97). It says:

In support of this contention great reliance is placed upon *Gulf, Colorado and Santa Fe Railway v. Ellis* (165 U. S., 150). In that case a statute of Texas allowing an attorney's fee to the plaintiffs in action against railroad corporations on claims, not exceeding in amount \$50, for personal services rendered or labor done, or for damages, or for overcharges on freight, or for stock killed or injured, was adjudged unconstitutional. It was held to be simply a statute imposing a penalty on railroad corporations for failing to pay certain debts, and not to enforce compliance with any police regulations. It was so regarded by the supreme court of the State, and its construction was accepted in this court as correct. While the right to classify was conceded, it was said that such classification was based upon some difference bearing a reasonable and just relation to the act in respect to which the classification is attempted; that no mere arbitrary selection can ever be justified by calling it classification. And there is no good reason why railroad corporations alone should be punished for not paying their debts. Compelling the payment of debts is not a police regulation. We see no reason to change the views then expressed, and if the statutes before us were the counterpart of that, we should be content to refer to that case as conclusive.

There could not be a stronger decision to sustain the principles of a case than that.

Mr. STEVENS. But, Senator, when we provided equal penalty when a shipper refuses to pay an undercharge to the railroad, what then?

Mr. FAULKNER. I do not think that would alter the principle, or change it, as announced by the court. In order to make such a law constitutional you would have to apply it to everyone over whom Congress has jurisdiction in the litigation of the courts. As the court has held that this is not a proper subject for classification, it deprives you of the right to place the carriers into a class by themselves in this collection of debts. Therefore, in order to make this a valid, constitutional law, you would have to make the penalties provided cover all suitors over whom Congress has jurisdiction. That position, I think, is correct.

Mr. Chairman, I will not discuss the third proposition, which I think renders this section unconstitutional, as I desire to hurry on. I shall leave it to the committee to determine that for itself.

It is a provision that if the line is on a connecting carrier's road, the liability shall be paid by the initial carrier. Whether the Congress has the power to impose a liability on the initial carrier for loss upon a connecting carrier's road and require him to collect that loss himself, after first paying it to the shipper, is a question that arises under the Carmack amendment, which has never been decided, and which I do not propose to discuss before the committee to-day.

I want to refer to some of the questions affecting the merits of this bill, as there are many things to be considered before its favorable consideration. For example, you ought to determine whether the initial carrier or the delivering carrier should be the responsible party. If you determine that, then you should determine the basis upon which the claimant should make his claim to the railroad company—I mean upon what evidence. I think you ought to provide in any bill, if any such bill should ever be passed, that the claimant should file with the railroad company liable the bill of lading, the invoice, and if any damages have occurred, the actual statement of the damages, and, if he has been put to any expense, the actual bill of expense, and the affidavit of the delivering carrier or agent at the point of destination that the goods have not been delivered. That

ought to be imposed upon the shipper as a duty in presenting his claim, if you want prompt action.

I desire to call the attention of the committee to another matter. The period of ten days for acknowledgment of the claim is not objectionable. As a general rule, all claims are acknowledged within that time. Ninety days is not really an objectionable period of time for the payment of claims on the line of the carrier that has issued the bill of lading and initiated the traffic, the injury occurring on his line. But, gentlemen, limiting the time of payment to ninety days, where the bill of lading or the routing of the property is over a long haul, I fear the provision would be impracticable. It could not be done in ninety days.

The traffic gentlemen who are present here will fully sustain the view that I have expressed. In such a case they have to write to the conductors of each division, and to each line at junctional points where it is transferred, to trace it up and find where it was lost, on what road it was lost, and secure all these facts before they can say that this claim is a just claim.

You must remember that under the present practices of the carrier the shipper may have routed his freight by a route different from that with which the carrier is connected that initiates the freight. That renders it far more difficult to ascertain the facts. You must further consider that the Interstate Commerce Commission has taken this subject under consideration.

This whole claim subject, gentlemen, is now before the commission. The Freight Claim Association notified Mr. Adams last year, and we have here some of the gentlemen who are members of a committee of that association, to come to their association and discuss these matters with a view of making an organization within the freight departments of the roads that would facilitate the more rapid payment of claims. Mr. Adams met with it, and I have read his speech before the association with a great deal of pleasure. He suggested the appointment of a committee to act with the Interstate Commerce Commission, informed them that the Commission under his advice the year before had directed him to formulate rules and regulations upon this very subject, and asked the association to do as the accounting officers of the railroads have done in reference to questions of accounts of the carriers, to appoint a committee to cooperate with the Interstate Commerce Commission. That was done at once, and that committee is now working with the Interstate Commerce Commission, trying to devise means, as they did in the accounting departments of the roads, to avoid, as far as possible, contentions between shippers and the carriers.

The carriers were paying some of these claims so fast that the commission issued an order on the subject. It found that claims for overcharges were being paid too rapidly, and without, as it feared, sufficient investigation, and in the ruling Bulletin No. 3, issued February 12, 1909, rule 68, it provided, "that it is not a proper practice for railroad companies to adjust claims immediately upon presentation without investigation. The fact that shippers could give a bond to secure repayment in case, upon subsequent examination, the claims were proved to have been improperly adjusted, does not justify the practice."

These overcharges the commission felt the railroads were settling too rapidly, without determining the question whether on long through routes the exact rates charged had been satisfactorily ascertained, and the settlement was in exact accordance with the lawful rates of the different roads.

Mr. ADAMSON. Were they not afraid that some rebates might slip in?

Mr. FAULKNER. Yes. That was the purpose of the rule.

The CHAIRMAN. Was not that ruling made after the hearing of the meat packers' claims in Chicago for damages?

Mr. FAULKNER. I do not know; but I know, as Mr. Adamson suggested, that it was to prevent any possibility of a refund except in accordance with the filed schedules.

Mr. ADAMSON. For fear a rebate might be made and the bond taken and the bond put to the bed and allowed to sleep forever?

Mr. FAULKNER. Yes. That shows that the railroads as a general rule on that class of claims were not delaying settlements, and that the commission thought they were going a little too fast in their adjustments. Whether they had any suspicion that it was being improperly done, I do not know.

The CHAIRMAN. There was quite a hearing and discussion of the subject in reference to the claims by the so-called "packers" in Chicago for meat transported elsewhere, and the Attorney-General issued notice to the packers and the railroad companies, I believe, that they must observe the law. The question whether they had violated the letter of the law was somewhat doubtful, but they had certainly violated the spirit of the law, and I think this ruling followed that investigation.

Mr. TOWNSEND. You understand, Senator, of course, that the claims matter furnishes now about the only means of granting rebates?

Mr. FAULKNER. Yes, sir; and of course the commission has to be very particular about it, and they are right; and their ruling is that no claim for refund must be paid until the carrier is thoroughly satisfied of the absolute correctness of the amount.

Mr. KENNEDY. This fixing of ten days—does not that relax rather than make more harsh the operation of the existing law?

Mr. FAULKNER. I do not know. That would depend upon the law of the State.

Mr. KENNEDY. I mean the operation of the law that we passed. If the railroad exacts too much and receives more than the filed rates, it has violated the law?

Mr. FAULKNER. Yes, sir.

Mr. KENNEDY. The passage of this, it seems to me, would give them ten days' grace to correct that, if done by mistake.

Mr. FAULKNER. I doubt if it would relieve them of any of the penalties prescribed by this statute—the passage of this law.

Mr. KENNEDY. It occurred to me it might operate that way. It could easily be made to operate that way, and that would be a relaxation of the harshness of the other rule.

Mr. FAULKNER. I grasp the force of the original question.

Mr. KENNEDY. Do you say, Senator, that the railroads are anxious to cooperate with the commission in the endeavor to establish a speedier method of adjusting claims?

Mr. FAULKNER. I know they are, sir; and I know that is the opinion of the commission, and I know that is the opinion of Professor Adams in reference to this matter, and they are now working actively on that line. There is a member of that committee present who will be before you and who will give you the relation of the carriers with the commission on the subject of the adjustment of claims.

The CHAIRMAN. Is there some one else?

STATEMENT OF MR. R. L. CALKINS, OF NEW YORK, FREIGHT CLAIM AGENT OF THE NEW YORK CENTRAL RAILROAD.

Mr. CALKINS. Mr. Chairman, did you wish me to give you some information in regard to the committee that is now in conference with the Interstate Commerce Commission?

The CHAIRMAN. We would be glad to have any information bearing on the question, including that.

Mr. CALKINS. At the suggestion of Professor Adams, representing the Interstate Commerce Commission, the Freight Claim Association, which is an organization representing about 90 per cent of the railroads on rail and water lines, appointed this committee. He suggested that we form a committee and meet with him or with representatives of the Interstate Commerce Commission for the purpose of formulating, possibly, some new rules or revising or considering our present rules and reaching, possibly, some means by which more expedition in the settlement of claims could be had.

That was one of the objects of the conferences. The first meeting was held in Chicago, in October, I think. Professor Adams attended it and addressed them, and the Senator has mentioned the suggestions he made there. The next meeting was held in this city in November, which Professor Adams attended, and Commissioner Harlan addressed the claims committee. The next meeting is to be held in this city on March 1. There are several subcommittees of this claims conference committee, so-called, which are working on different subjects which have been suggested by Professor Adams, such as the more prompt settlement of claims, classification of losses and damages, the revision of the present rules of the Freight Claim Association, and various other subjects. I can not enumerate them now. I did not expect to be called upon to give a résumé of the work of this committee. I am only a member of it.

Mr. RICHARDSON. In those conferences that you have had between the members of that association and the Interstate Commerce Commission, have you undertaken to find out what would be the proper construction of the laws that Congress has passed relative to the transportation of freight, charges, and so forth?

Mr. CALKINS. Not as yet.

Mr. RICHARDSON. You have not reached that stage?

Mr. CALKINS. No, sir. I have no doubt but that it will come to that.

Mr. RICHARDSON. Because all of the rules you adopt would be made subordinate to the law of Congress that was passed upon that subject?

Mr. CALKINS. Surely. The Freight Claim Association has never undertaken to formulate rules for the government of its members as to liability between carriers and shippers or consignees. They may hereafter.

Mr. RICHARDSON. I am just asking for information, to know the scope of your association. I think that is a very important association to reach those conclusions. But do you discuss such things as demurrage, and loading and unloading of cars, and time, and all that sort of thing?

Mr. CALKINS. Yes, sir; anything that would come within our province of adjustment of freight claims or regulating our agents in the handling of freight. But as to questions of liability between carriers and shippers those are matters that are left with our legal departments.

The CHAIRMAN. What is the process of adjusting these claims as between the railroads themselves?

Mr. CALKINS. I would like to take a supposititious case and follow it through.

The CHAIRMAN. We would be very glad to have you do it.

Mr. CALKINS. Suppose a claim is presented against a railroad in New York on a shipment to Kansas City. It is for damage. That claim, as is the usual practice, is acknowledged by the road against which it is filed within the course of a few days; generally within two or three days; that is, if received direct from the claimant to the claim department. It may be forwarded through local agents or freight solicitors, and be more than two or three or four days in reaching the claim agent. But when the claim agent receives it, it is usually acknowledged to the claimant within a very few days. If accompanied by the bill of lading, the freight bill, and the bill substantiating the amount claimed—if those have been filed by the claimant—the claim at once is taken up for investigation. If all of those necessary documents are not received at the time, it is necessary for the claim agent to correspond with the claimant and obtain them; in other words, to obtain sufficient facts and documents to enable him to intelligently and properly or legally adjust the claim. If the road against which the claim is made is responsible for the damage—that is, if the damage occurred on that line—adjustment can be made, and usually is made, within perhaps thirty days. If there is no record of the damage on that road, it is necessary to forward the papers to the next road in the route and have them make such investigation as is necessary, usually by referring the papers to the junction point at which they received the freight and the point at which they delivered it to the line beyond them, and that course is gone through to destination, unless the damage is located.

There is a proposition before the Claims Committee at the present time which is now being practiced to a considerable extent, of the claim department against which the claim is filed immediately addressing the destination agent and ascertaining the condition of delivery of the freight to the consignee.

Mr. TOWNSEND. Would your claim agent have authority to settle a claim if he is satisfied it is right?

Mr. CALKINS. Yes, sir.

Mr. TOWNSEND. It does not have to go to any other department of the railroad?

Mr. CALKINS. No, sir. I am speaking now of my own position. That may not be true of the claim departments of all roads. It is, however, true of the majority of the roads, I think.

In regard to the ninety-day clause in this bill, I would like to say that in my opinion a very large percentage of just claims is paid

in far less than ninety days, but there is a large volume of claims which are not just claims and which should not be paid and others in which investigations have to be made requiring more than ninety days to develop the carrier's liability. There are many overcharge claims which in the opinion of claimants should be paid immediately, but which we may find, after considerable investigation and correspondence with tariff bureaus, and so forth, must go to the commission with an application for authority to pay the claims. I have a great many of those claims where I must obtain permission from the Interstate Commerce Commission before I can pay the claims.

Mr. KENNEDY. I suppose there are quite a number of claims of such a character that it is pretty hard to tell whether they ought to be paid or ought not to be paid?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. By what reason or authority has the commission a right to pass upon a claim and decide whether it is just or not?

Mr. CALKINS. It is a question of the interpretation of the rulings that have been formulated by the Interstate Commerce Commission.

Mr. RICHARDSON. I understand that interpretation, but if you think that you are liable to the demands of a claimant and that the claim is just and right, I do not see what any authority on earth has got to do with it. But your own company, unless you get into some conspiracy and are doing something wrong, would be perfectly competent to attend to it itself.

Mr. CALKINS. It may be a difference of opinion as to the basis of a tariff between two points over other roads by which there are no through tariffs. A man may file a claim on the basis of certain tariff rates in existence on other lines.

Mr. RICHARDSON. It is a transaction that the Interstate Commerce Commission would have to look into to see that you are doing right by somebody else?

Mr. CALKINS. Yes; but the combination of rates on these irregular routes by which the shipment traveled might exceed the through tariff rate, and the law would require us to settle any excess over the rates by the natural routes. But we must have the commission's permission. That is one of the cases. There are many.

Mr. RICHARDSON. I am glad you have explained it so clearly.

Mr. KENNEDY. Coming back to the case you explained a while ago, suppose the goods are received on a routing from New York to Kansas City—I believe that was the line—in good shape, and a claim comes in for damage to those goods. It is claimed that they did not reach their destination in that good shape, but that they were damaged by rough handling in transit, and you have difficulty in determining where that rough handling occurred amongst the roads. So far as the claimant is concerned there is no contention but that he has the right to recover against some one?

Mr. CALKINS. That is true if we have evidence that the damage did exist at the time the shipment was delivered to the consignee at the destination. We must obtain that information.

Mr. KENNEDY. So far as the shipper was concerned, when the goods are received in good shape, that is conceded, and yet when they reach their destination in bad condition, apparently through rough handling, there is a liability somewhere?

Mr. CALKINS. Yes. The claimant does not submit that evidence with his claim as a rule; not perhaps in one case in a hundred. He alleges certain damage, and we must develop it.

Mr. KENNEDY. What is done with such a case as that now, in the ordinary practice?

Mr. CALKINS. The practice now is to make our investigation at the shipping point at the same time that we make the investigation at the destination point, and if we develop that the goods were received, notwithstanding it may be a clean bill of lading—sometimes a clean bill of lading is issued when the goods are not in that condition, you know—if we develop, independent of the bill of lading, the fact that the shipment was received at the shipping point in good condition, as indicated by the bill of lading at the shipping point, and yet that the damage did exist at the destination at the time of delivery to the consignee, then we can settle that claim at once without any intermediate investigation.

Mr. KENNEDY. It is not necessary to locate the responsibility for the injury?

Mr. CALKINS. No. We can do that after the claimant has received his pay.

Mr. STAFFORD. Is that the practice with all roads when damage is proven to have occurred to merchandise in transit, that the initial carrier will settle the account and then determine upon whom the burden should rest in paying it among the other carriers?

Mr. CALKINS. I think it is the general practice; yes, sir.

The CHAIRMAN. On that question, suppose you make a shipment, say, from New York to Kansas City, and the goods are damaged on some part of the line west of the Missouri River. Is the claim ordinarily filed at Kansas City or at New York?

Mr. CALKINS. That depends. With the large shippers, the large industries, they file nearly all of their claims in behalf of their consignees.

The CHAIRMAN. Suppose that claim were filed with the New York Central Railroad, and from your investigations you were satisfied that the damage occurred after it left your line, and you were satisfied that the damage did occur. Would you pay the claim before the other line conceded its liability or wait until it conceded the liability?

Mr. CALKINS. Under the present rule of the Freight Claims Association that I have mentioned we can pay that claim and charge it out to that road without reference to the authority.

The CHAIRMAN. Although they may deny that they are liable?

Mr. CALKINS. That will come up after the settlement of the claim.

The CHAIRMAN. That is what I wanted to get at.

Mr. CALKINS. There is an arbitration committee in this claim organization for that very purpose.

The CHAIRMAN. You say you can pay that claim?

Mr. CALKINS. Yes, sir.

The CHAIRMAN. As a matter of practice, do you actually do that before the liability is settled with the other roads, ordinarily, in large claims?

Mr. CALKINS. Yes. Large claims—not involving large proof but large amount—may be referred for investigation for the information of the carrier liable. As a matter of courtesy it is proper that they should be advised.

The CHAIRMAN. But the ordinary small claims are paid by the carrier upon whom the claim is made?

Mr. CALKINS. Yes, sir.

The CHAIRMAN. How long have you had rules to that effect?

Mr. CALKINS. Several years. I could not say exactly.

The CHAIRMAN. Suppose the claim were made to the line delivering the goods at Kansas City?

Mr. CALKINS. The same thing would apply.

The CHAIRMAN. Although the damage might have occurred on the New York Central line?

Mr. CALKINS. Yes, sir. The destination roads could pay that claim with more intelligence promptly than the initial line, because the initial line only knows the condition of the property at the time of its receipt from the shipper when it was forwarded. The delivering line knows the condition of the property at the time of delivery to the consignee, and he has the bill of lading to evidence the condition at the shipping point.

Mr. RICHARDSON. The initial carrier is responsible for any damages or destruction of the shipment under the law?

Mr. CALKINS. Under the bill of lading?

Mr. RICHARDSON. Yes; and under the present law?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. If a shipper makes a shipment on a through route that goes from your line and the property is lost or mislaid on some other line with which they are transacting business in connection with it, the shipper comes to you as the initial carrier, and under the statute can bring suit instead of going away off on the connecting line and bringing suit in a distant State?

Mr. CALKINS. Yes. But the Hepburn Act provides that the road issuing the bill of lading is responsible.

The CHAIRMAN. Under your statement, Mr. Calkins, that the claim may be filed with the initial carrier in the shipment that I suggested, and also with the delivery carrier, and each may pay the claim without consulting the other, what is to prevent a man filing a claim with both companies and receiving two payments on the claim?

Mr. CALKINS. I can answer that in a very brief way, or otherwise, as you may wish. A properly substantiated or supported claim, when presented, should have the original bill of lading, the original freight bill, and, if it is a loss or damage claim, the invoice of the value of the goods.

The CHAIRMAN. Suppose it is an order bill of lading that the company has itself. That is in the hands of the delivery carrier?

Mr. CALKINS. Yes. It must be procured from the road by which the shipment is made and attached and filed.

The CHAIRMAN. You do not pay claims, then, without the production of the original bill of lading or something accounting for its loss?

Mr. CALKINS. No, sir.

The CHAIRMAN. Is the original bill of lading when presented considered as proof of the character of the goods when delivered to the initial carrier?

Mr. CALKINS. Not always, but it is evidence.

The CHAIRMAN. It is prima facie evidence?

Mr. CALKINS. Yes, sir. I remember a case not long ago of a bill of lading issued for a case of rabbit skins, I believe, and when they were

lost they were proved to be oil paintings of great value; so that it is not always proof. [Laughter.]

The CHAIRMAN. What I mean is, you do not require, as I understand you, any other proof of the character of the goods as delivered to the initial carrier than the bill of lading?

Mr. CALKINS. No, sir; with this exception, that some of the freight inspection bureaus located at large railroad transfer points, such as Buffalo, Chicago, and St. Louis, make inspection of packages of freight to ascertain if the bill of lading represents the actual article shipped in order that there shall be no violation of the initial classification.

The CHAIRMAN. But that is a matter of defense for the railroad. What I wanted to get at was this: In a case of damage, when the shipper presents the bill of lading is that presumed, so far as he is concerned, to correctly state the character of the goods, that they are received in good order?

Mr. CALKINS. Yes, sir.

Mr. WASHBURN. Do you ever have any cases where claims are brought against you as the initial carrier and where you are not responsible for the damage and where there is no question of damage, where you find it difficult to fix the responsibility on any connecting road, to find where the damage occurred and by whom it was inflicted?

Mr. CALKINS. Very many.

Mr. WASHBURN. And in those cases you have to bear the charge yourselves?

Mr. CALKINS. Well, in some cases, but not as a rule. Rules have been provided by the Freight Claim Association, this national railroad organization, which protect to a certain extent, at least, one road against another in the payment of claims by one road that are really chargeable to another.

Mr. WASHBURN. In the case I instanced, how is the initial road really protected against the connecting road by these rules?

Mr. CALKINS. The rules may provide that a road against which a claim is filed may pay the claim on evidence that the loss or damage or overcharge, as the case may be, actually exists, and may charge out without reference to authority to such other roads as may be chargeable with the claim, or may, in case the investigation fails to locate the point at which the loss or damage occurred, pro rate it as unlocated from the shipping point to the destination, whether on the basis of mileage or the basis of revenue derived by each road on a shipment.

Mr. WASHBURN. That is what I wanted to get at.

The CHAIRMAN. How often are these balances between the railroads settled?

Mr. CALKINS. Individually, as a rule, with roads that are not in one system or organization. Sometimes they are charged out in monthly accounts, monthly statements. But as a rule they will be proportioned on amounts chargeable by one road to another and are charged out individually.

The CHAIRMAN. I supposed they only settle the balances. They do not interchange?

Mr. CALKINS. The accounting departments will settle the balances. I am speaking of the operations of the work in the freight-claims office. The freight-claim office will charge out those proportions to other

roads, and in the accounting offices of the roads they will settle by balances at the end of each month.

The CHAIRMAN. At the end of each month?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. The Chairman, Mr. Mann, asked you a few moments ago if a bill of lading was not presumptive evidence of the facts alleged in the bill. Now, do you believe that it would be a right and just and proper law to declare that the bill of lading given by an agent of a common carrier should be absolutely accepted under all circumstances and conditions?

Mr. CALKINS. No, sir; I do not.

The CHAIRMAN. Have you ever known of an agent signing a bill of lading and making a description of a property therein when he had never received that property at all?

Mr. CALKINS. Yes, sir; there are such cases.

Mr. RICHARDSON. You do not think, then, that the carrier ought to be made responsible for such a fraud in cooperation or in concert with some outsider as that would be when the property never came into the hands of the common carrier at all?

Mr. CALKINS. I would rather our attorneys would answer that. I am very ready to answer the part where the employee of the railroad was not a party to it.

Mr. RICHARDSON. You certainly do not think you ought to be responsible for property that you never received?

Mr. CALKINS. No, sir; I do not.

Mr. RICHARDSON. We have been discussing a bill of lading proposition here, a good deal heretofore.

Mr. STEVENS. You evidently differ with the opinion of the legislature of the State of Alabama on that subject. [Laughter].

The CHAIRMAN. What is your position where you issue a bill of lading on your road and collect the freight—possibly this would not occur on the New York Central—and the freight was never received; that is, the shipment was never received in fact, or not completed. What is your practice in those cases?

Mr. CALKINS. In the case of a claim for the value of that freight, do you mean?

The CHAIRMAN. Yes.

Mr. CALKINS. Our position is to pay that claim as soon as we can ascertain the proper amount, and the sooner the better, both for the railroad company and the claimant.

Mr. TOWNSEND. Can you say whether it is a fact or not that the railroad companies generally, those in your experience, at least, are paying their claims more promptly now than they used to do?

Mr. CALKINS. Yes, sir. I think claims are very much more expeditiously paid now than they have been in past years, and they are improving every year. I have a little evidence of that in a letter here from the chairman of the National Industrial Traffic League, or chairman of the freight department of that organization. It just came along yesterday, and I brought it with me. He says—

The CHAIRMAN. Who is he?

Mr. CALKINS. Mr. Bellville. It is a letter he recently wrote in reference to the improvement in the settlement of claims by railroads. He says:

It is undoubtedly a fact that in the last two or three years, and notably during the last eighteen months, there has been on the part of the railroads of the country in

general an absolute reformation in the matter of the adjustment of claims of every character, and this is particularly true in regard to claims for minor amounts. I think you will remember that in my reports to the league we have given full credit to the railroads in general, and the freight claim agents in particular, for the reform which has been worked in this direction.

As illustrating the improvements which have been made, I was talking a day or two ago with the traffic manager of a very large industrial concern which files from 1,200 to 1,500 claims per annum, and averaging about \$40,000 a year, and he told me that on the 1st of January, 1908, he had unsettled claims to the amount of about \$65,000 and that on the 1st of January, 1909, his unsettled claims amounted to but \$26,000, and on the 1st of January, 1910, having filed during the year claims aggregating \$35,000, they had only \$13,000 unsettled, a large part of which had been filed during the last few months of 1909.

This letter is dated January 8, 1910.

Mr. TOWNSEND. Are there any railroads not members of this voluntary Freight Claim Association?

Mr. CALKINS. Very few, and all of those, I think, are very small roads, principally water lines. The Freight Claim Association represents about 90 per cent of the railroad mileage of this country and Canada.

Mr. TOWNSEND. Now, this reform in the methods of adjusting and paying claims has been brought about through the cooperation of the accounting department of the Interstate Commerce Commission and the railroads themselves, has it not?

Mr. CALKINS. To a certain extent, and various conferences with industrial leagues and the Freight Claim Association, and various conferences with Professor Adams, even prior to his suggestion that we confer with the commission. There has been a steady improvement in the matter of expediting the settlement of claims going on for the last ten years at least. I think you gentlemen will appreciate this fact, that a railroad may settle 90 per cent, or even a larger percentage, of their claims promptly and with entire satisfaction to the claimant, but if there is one or a few claims which are delayed their record for prompt treatment of claims is lost sight of.

Mr. TOWNSEND. You recognize the fact, don't you, that in the past, at least on the part of some of the roads, there has been some disposition to delay as long as possible the adjustment of claims?

Mr. CALKINS. Yes, sir. I have no doubt about that.

Mr. TOWNSEND. I do not think anyone who has practiced law has any doubt of it, either?

Mr. CALKINS. I think now the freight claim agents are desirous of settling their claims promptly. It is only a question with them of developing the facts promptly to justify the payment.

Mr. KNOWLAND. Conditions are growing better all the time?

Mr. CALKINS. Yes, sir.

Mr. KNOWLAND. There is very little complaint now?

Mr. CALKINS. I believe so.

Mr. TOWNSEND. Is there any probability of getting these other roads into this Freight Claims Association—those other roads that are not in now?

Mr. CALKINS. The association is trying all the time. But those other roads are very few, and they are of minor importance. Many of them are small steamship lines plying on rivers or inland waters, and many of them that are not members of this association are abiding by the rules of the association.

The CHAIRMAN. When you refer to ninety per cent of the mileage, do you have reference to the mileage of the railroads or the mileage of the railroads and the ship lines combined?

Mr. CALKINS. I had reference to the mileage of the railroads, but I think the same thing would apply to the steamships. I think all of the coastwise steamship lines on both sides of this country, on the Pacific and on the Atlantic, are members, nearly all of them at least.

The CHAIRMAN. Can you tell us how much the claims amount to that were allowed in the course of a year, on the average, by the New York Central, or the total amount in the United States?

Mr. CALKINS. No. I would be ashamed to tell the amount of the New York Central. [Laughter.] I think we average something over a million dollars a year for loss and damage, and I pay about 450 claims a day. I have averaged that for several years.

Mr. RICHARDSON. Do you have any claims that you have ever settled and that have been filed against your company for failure to furnish cars?

Mr. CALKINS. Yes, sir. We have had some, but not in the last three years.

Mr. RICHARDSON. Have you ever settled any of those?

Mr. CALKINS. I do not know whether we have in court or not.

Mr. RICHARDSON. Or anywhere else?

Mr. CALKINS. I believe not.

Mr. RICHARDSON. What is the condition of your road now as to its capacity and equipment to furnish cars for the demands of shippers?

Mr. CALKINS. I am not competent to speak for the transportation department on the subject, but just at the present time it is generally known that our equipment, like that of many other roads, is far better and more able to handle the traffic than it was a few years ago.

Mr. RICHARDSON. Of course that is what I am trying to get at. Now, there is not a shortage of cars, according to your judgment, which is claimed to exist in the country now as compared with what it was in 1907?

Mr. CALKINS. No, sir.

Mr. RICHARDSON. Was not that about the severest ordeal or trial, within a given period, that the railroads had to go through to keep up with the immense increase in production in this country?

Mr. CALKINS. Yes, sir. I believe that is true, so far as my experience is concerned.

Mr. RICHARDSON. Taking into consideration the wonderful increase in production of our country in the last five or six years, what has been the percentage of increase on the part of the railroads in the construction and manufacture of freight cars?

Mr. CALKINS. I am not competent to answer that.

Mr. RICHARDSON. But you do know that the productive capacity of this country has very far exceeded the transportation facilities of our railroads?

Mr. CALKINS. It has in times past, but I believe that is not the case at the present time.

Mr. RICHARDSON. What I mean to say is that the railroads need a little breathing spell to catch up, don't they? They are doing the best they can?

Mr. CALKINS. Undoubtedly. I do not think there is a shortage of cars at the present time, although the tonnage that is moving now is

heavier than ever before. But equipment has been increased so largely that——

Mr. RICHARDSON. In that condition of rising up and getting above all the restraining and hampering effects of your experience of 1907, do you believe that drastic and restraining and hampering legislation is necessary to give the railroads that expansion that they need in this country? I mean drastic legislation such as we have got proposed in many instances here?

Mr. CALKINS. No, sir.

Mr. RICHARDSON. Don't you think you should have more liberty and license, and that any that we could give would be productive of benefit?

Mr. CALKINS. Unquestionably.

The CHAIRMAN. Mr. Calkins, are you at the head of the claims department of the New York Central?

Mr. CALKINS. Yes, sir.

The CHAIRMAN. Does that include any of the lines controlled by the New York Central beside the actual New York Central Railroad?

Mr. CALKINS. There are eight freight claim agents representing the lines in what is known as the New York Central system—the Michigan Central, the Lake Shore and Michigan Southern, the Big Four, the Lake Erie and Western, the Pittsburg and Lake Erie, the Rutland, and so forth, and the Boston and Albany. That is under my jurisdiction. Those freight claim agents are in what is known as the New York Central committee of freight claim agents, and I am chairman of that committee. That committee was organized partly for the purpose of expediting the settlement of claims for traffic moving over the several lines in that system, and by that I act as the freight claim agent of all the roads in the system in connection with claims presented against the New York Central roads.

The CHAIRMAN. Do you know how many men are engaged in the settlement of claims on the entire New York Central lines?

Mr. CALKINS. I do not think that 500 would be too large an estimate; I have 102 in my office and three special agents on the road for personal investigations.

The CHAIRMAN. And these men do nothing else?

Mr. CALKINS. Nothing else; no, sir. If you will permit me I would just like to read a letter that I wrote to the chairman of the Niagara Frontier Shippers' Traffic Association in connection with the possible cause of delays in the settlement of claims. The letter is addressed to Mr. A. E. Sherman, chairman, Niagara Frontier Shippers' Traffic Association, 424 Chamber of Commerce Building, Buffalo, N. Y., and reads as follows:

NEW YORK, February 1, 1910.

Mr. A. G. SHERMAN,

*Chairman Niagara Frontier Shippers' Traffic Association,
424 Chamber of Commerce Building, Buffalo, N. Y.*

DEAR SIR: Acknowledging receipt of your letter dated 27th ultimo, in which you invite an expression of my opinion as to the most prominent reasons for the delay in the settlement of freight claims:

Without the least desire to palliate the faults of carriers, I must first give due prominence to those of the average shipper or consignee, because delays in the settlement of claims are largely due to the incomplete form in which they are presented for the carriers' consideration. Possibly the average claimant considers that the claim office has, or at least should have, all facts and data regarding his particular claim at hand, and should therefore be in a position to immediately pass upon its merits. If this

condition were possible, it would assuredly be ideal both from the standpoint of claimant and carrier; but while the former may have immediate knowledge of all irregularities concerning his traffic, the business of the latter being so much more expensive both as to volume and territory, the facts essential for a reasonable substantiation of claims must necessarily consume more time for development.

To illustrate the above I will cite the case of a claim before me: The claimant sent us a bill representing the value of goods checking short at destination. We acknowledged its receipt and informed him it would be necessary for us to have the bill of lading, invoice, and freight bill to enable us to locate the particular shipment and verify the claim. He sends us the freight bill and suggests that we are simply trying to delay the settlement. This is not an exceptional case, but quite similar to daily experiences in any large claim office. Firms employing modern business methods are more particular in the preparation of their claims before presentation, but the majority omit many material facts or documents, and thus cause the claim office to secure them by correspondence or investigation.

Claims for loss or damage which is discovered by consignees after taking delivery, also claims on traffic which has moved over several different lines to more or less distant points, require more time for investigation and verification than do claims on local traffic, which delivering agents can readily confirm, yet the average shipper or consignee places them all in the same class and apparently considers that one should be adjusted as expeditiously as the other. Probably one-half the claims presented are settled within thirty days, and a large percentage of the balance within sixty days. The prompt adjustment of the many is, however, frequently lost sight of through delay to the few.

Regarding avoidable delays chargeable to carriers, the principal causes can probably be assigned to insufficient and inefficient forces in the claim office. Many and possibly the majority of claim offices are so equipped that all classes of freight claims are treated promptly and intelligently, but you can readily appreciate that when such an office is obliged to await the action of a line having an indifferently equipped office, before making settlement with claimant, how easily the former can, in the opinion of claimants, be classed with the latter.

I have devoted much time and thought to the subject of prompt settlement of freight claims, and believe my efforts in that direction have brought about many excellent improvements in the past few years, but much remains for accomplishment. Therefore I appreciate your request for my views and I desire to assure you of my willingness to cooperate with your association in any way I consistently can for a betterment of the conditions you have in hand.

In conclusion, permit me to add that if your association can recommend to the shipping public a few or all of the following suggestions a marked improvement in the time required for claim settlements can be made:

In the case of overcharge in rate that bill of lading and freight bills accompany the claim, with definite reference to tariff or classification on which based.

In the case of overcharge in weight that the above documents, with definite evidence of the correct amount, be submitted.

In the case of loss or damage that the bill of lading and freight bill, with invoice of value or definite evidence of amount actually due, be submitted.

That in case the delivering carrier has no knowledge of the loss or damage claimed reasons be given for placing the responsibility with them.

That all claims be made in conformity with conditions of the uniform bill of lading, it being the duty of freight claim agents to observe such conditions in considering questions of carriers' liability.

Respectfully,

_____,
Freight Claim Agent.

Mr. STEVENS. Do you have any circular of instructions that you give claimants, advising them how to prepare their claims for presentation?

Mr. CALKINS. No, sir; we have not. The freight claim association has rules defining what evidence should be furnished in support of claims.

Mr. STEVENS. Is that made public in any way so that shippers can get hold of it?

Mr. CALKINS. Not at the present time. I have forms for the purpose of sending out to claimants who file incomplete claims with my

office, and that is probably practiced by a majority of railroads, and those forms request certain documents and explain why they are necessary.

Mr. STEVENS. Those can be had upon request?

Mr. CALKINS. Yes, sir.

Mr. STEVENS. You spoke a moment ago of a large concern whose accounts had been settled more promptly each year. In a concern like that does your company have claims against that concern for shortage, where mistakes have been made?

Mr. CALKINS. Undercharges?

Mr. STEVENS. Yes, sir.

Mr. CALKINS. We have very few undercharge claims against consignees, only such as are developed by investigation through our accounting department or corrections in weights after the delivery of the freight has been made at a bill rate. There are some cases.

Mr. STEVENS. Do those accounts go through your department?

Mr. CALKINS. Part of them do; the majority, I think, go through the freight accounting department, the freight auditor.

Mr. STEVENS. Those that do not go through your department but go through the freight auditor's department, in what way are they collected, each individual claim collected directly of the shipper?

Mr. CALKINS. Yes, sir.

Mr. STEVENS. The consignee?

Mr. CALKINS. Yes, sir.

Mr. STEVENS. In what way are those collected that go through your department? By way of set-off in accounting or collected directly, individually?

Mr. CALKINS. They are never adjusted by set-off; they are adjusted individually, each case separately on its own merits.

Mr. RICHARDSON. Does the settlement of claims for the destruction of live stock go through your department?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. What is your mode and manner of arriving at your liability? How do you do that?

Mr. CALKINS. In the case of loss?

Mr. RICHARDSON. Yes; a claim for a horse or cow?

Mr. CALKINS. Well, the live-stock contract provides for specifications as to the value of the animal at the time of its shipment; and settlement of claims would be based upon that stipulated valuation.

Mr. RICHARDSON. That is what I am after. You have a stock agent, don't you, who first takes note of the destruction of animals?

Mr. CALKINS. Yes, sir.

Mr. RICHARDSON. And he brings to you the valuation?

Mr. CALKINS. Well, the contract shows that; the bill of lading for the live stock will show the valuation.

The CHAIRMAN. I think you are talking about different things.

Mr. RICHARDSON. I mean when a railroad runs over an animal.

Mr. CALKINS. I do not handle those cases.

Mr. RICHARDSON. That is a great question down in our country, and both sides have committed great blunders, both the railroads and the people. It has brought about a very bad condition of affairs.

Mr. TOWNSEND. When you have a case of undercharge on a freight shipment you are not permitted to pay those indiscriminately, are

you? Do your rules provide that each claim agent can pay that undercharge?

Mr. CALKINS. The undercharge?

Mr. TOWNSEND. Yes.

Mr. CALKINS. That would be money due us.

Mr. TOWNSEND. Can you settle those claims and receive the money?

Mr. CALKINS. We must collect those claims if we can, even by process of law, if necessary.

Mr. TOWNSEND. That is, the law compels you to do that?

Mr. CALKINS. That is right.

Mr. TOWNSEND. Does the commission grant you any leeway in that matter?

Mr. CALKINS. They do not grant me any leeway; I must collect them if possible; in fact, refer them to our legal department for them to collect, if possible; they make those attempts but very often fail to collect, probably largely through the lack of financial standing of the consignee.

Mr. TOWNSEND. As I understood you, you have very few of those except in cases of underweights or something of that kind, as you stated?

Mr. CALKINS. Of course, in the delivery of freight undercharges are coming up as corrections, which go through the auditor's accounts every day; there are as many undercharges as overcharges; those adjustments are going on constantly; I do not handle any of those cases; but where they fail to collect an undercharge the agent at the delivery point is charged with that amount in his accounts and he must seek relief through me; he therefore makes a claim for that amount, and I take it up as a claim in favor of the agent and undertake to collect it from the consignee; failing in that, it is referred to our legal department for their action.

Mr. FAULKNER. There is another gentleman here, representing the New York, New Haven and Hartford road, but the matter has been gone over so thoroughly he does not see any necessity for occupying the time of the committee.

The CHAIRMAN. Mr. S. H. Cowan was to have been heard on Wednesday, but he has forwarded a statement that owing to the illness of his father he will not be able to be here, and he has sent a written brief which, without objection, the stenographer will insert in the hearings as Mr. Cowan's statement.

(Following is the statement referred to:)

STATEMENT OF S. H. COWAN, ATTORNEY FOR AMERICAN NATIONAL LIVE STOCK ASSOCIATION.

As the attorney and representative of the American National Live Stock Association, composed of organizations of stock raisers and shippers, and principally west of the Mississippi River, and the Cattle Raisers' Association of Texas, an organization of cattle raisers in all Southwestern States and Territories, in behalf of both organizations I submit the following brief of argument in favor of certain amendments to the act to regulate commerce and in opposition to the proposal to take from the Interstate Commerce Commission the duty of defending and enforcing its orders and the control of the

same and to turn it over to the Department of Justice, excluding the commission and interested parties from appearance or participation in such suits.

Close relations with leading shippers' organizations throughout the country during the contest which resulted in the Hepburn bill and a knowledge of their interests leads me to say that I have no doubt they would, if the matter is brought to their attention, indorse the position which we take.

Those whom I represent have enormous interest as shippers, and they have spoken in definite terms by resolutions recently passed at the annual convention of the American National Live Stock Association, held at Denver, which resolutions have been duly filed with this committee. I beg to refer to the same and to request that they be incorporated as part of the record in connection herewith.

As to the provisions respecting interownership or acquisition of stocks and bonds of other carriers, and as to limitations on capitalization, I merely express the belief that, while a law should be enacted upon the subject, it is too important to attempt unless it be embraced in a most comprehensive act and in connection with a plan for valuation of railroads. These subjects are foreign to the design of the present act and foreign to the object of my argument.

I.

The act to regulate commerce might with material advantage to the public be amended in several of the particulars named in both the Mann bill and the Townsend bill, though in my experience and observations the enforcement of the present law—its administration—is not sufficiently advanced to enable us to wisely amend it in but few particulars.

The most important amendments which, it seems to me, are needed are the following, in the order named:

(1) To empower the commission to suspend the taking effect of a change in rates, classifications, tariffs, and rules and regulations, pending investigations, without limiting specifically the time by law.

(2) To so amend the long and short haul clause as to make it effective.

(3) To empower the commission to deal with terminal and all special charges which are in addition to or in connection with through rates, so as to make the total rates and special charges reasonable, without being obliged to consider the terminal or special charges separately and be obliged to make the special charges high enough to be profitable considered apart from the total of the rates for the through transportation under the present law as construed in the case of *Interstate Commerce Commission v. Stickney*, recently decided by the Supreme Court, and in the case involving reconsignment of hay. The commission can not really regulate terminal and special charges by considering the compensation embraced in the through rates as covering in reality the whole or part of the special vice. (This is very important and will become more so from time to time.)

(4) The duty to quote a rate and liability for misquoting it on application of the shipper to the commission, together with a penalty clause, should be provided for.

(5) The power to completely control the making of through routes and through rates, and rules and regulations governing the same so as to give shippers the choice of routes and compel interchange of cars where that appears necessary to secure the best service, but at the same time to safeguard the railroads in control of its business on joint rates and divisions and use of equipment. I would not give the shipper the right by law to route his freight; simply give the commission power to regulate that.

The shipper's right of routing to be in the commission's rules. The power to require interchange of loaded and empty cars is absolutely essential to the use of through routes.

(6) The valuation of railroads is an absolute necessity to any limitation of capitalization and to the application of the doctrine of fair return. Every important case involving systems of rates or rates on traffic of large volume involves the question of value, and the time required forbids intelligent effort to show it in a given case.

(7) The law should declare that the orders of the commission are to be presumed to be correct until the proper court has found that the commission has acted beyond its powers, either in violation of law or constitutional property rights, and that no opinion or conclusions of witness upon the facts shall be admissible against that presumption. As it is, these cases are tried in court largely on expert opinions and conclusions of witnesses, when in theory the commission is the expert body to whom the law commits the matter of opinions and conclusions, on every phase of the case on all facts essential to support its findings. In its annual report, December 21, 1909, at pages 5 to 10, the commission sets out the amendments which it recommends.

I wish to direct the committee's attention to the two particulars wherein I am fully persuaded the Townsend bill will, if enacted, be harmful to most effective administration of the law and materially weaken it, viz:

First. The creation of a special court of the sort and as proposed.

Second. Taking away the duty of the commission to defend its orders and to supervise the preparation and trials of cases involving the validity of its orders.

For reasons hereafter given I wish, in behalf of the western live-stock interests, so far as represented by me, to protest against these propositions.

In doing so I wish it clearly understood that I do not question that it is the intention of the proponents of these measures to aid rather than retard, to benefit rather than injure the administration of the law. But from extensive practical actual experience I am certain that the proponents are in serious error, probably arising from a failure to consider sufficiently the practical operation under the law as proposed. I trust that what I shall say will be treated in the spirit intended; that is, to do the best for the shipping public and do it fairly to the railroads, to the end of effective regulation.

II.

1. Commission and the courts.

The relation of the commission and the courts should be based upon the fundamental consideration that the commission is the best tribunal and the most capable to regulate carriers which Congress can devise, and that neither the courts nor any other department should have power to interfere except where the commission acts outside the scope of its powers. That is (1) where it acts not in accordance with the form and manner prescribed by law, and (2) where its action violates a constitutional right.

So far the act has not been construed by the Supreme Court to define the limits of the power of the commission over rates, or the courts over the commission, but from the language of the act and the decisions which have been rendered by the Supreme Court, it appears certain that the courts can interfere only in the cases mentioned above.

If so, and that will be fully determined within a year, there will remain little for courts to do in cases brought to annul the commission's orders.

That power will be exercised only in similar cases to those involving enactments of state legislatures and actions of state commissions. For practical purposes the trial will involve a sole question of fact—cost of service.

Cases not dependent on cost of service evidence will generally be those dependent on questions of law.

2. The cost of the service is generally the question to be tried.

Unless the cost is clearly shown to be such that the orders are confiscatory, no relief can or should be had. It needs no trial to show what the earnings are; that is not in controversy.

All such cases are suits in equity, and at last the Supreme Court must, as it has, determine the merits of the controversy. It matters little through what court the cause reaches the Supreme Court.

And, again, after the Supreme Court shall have determined a few of these cases involving different phases of the law and administrative action of the commission, its decisions will be followed as precedents by all courts alike.

3. If a special court is established let its jurisdiction extend to suits to annul state rates, etc.

When we consider that the number of transportation services rendered within a State, beginning and ending there, equals, if it does not exceed, the separate services of interstate traffic in such State, and in the aggregate of all States exceeds in importance the interstate traffic, there would seem to be no good reason for having a different United States court pass upon the rights of the people and the carriers with respect to the one character of freight or passenger traffic to the other, where is involved in each instance the

same question, namely, Are the rates or regulations made by state or interstate commission confiscatory under the fourteenth or fifth amendment?

That it is essential in both cases for the courts to exercise the injunctive powers is not questioned; Congress could not prevent it; but there can be no pretense, in my opinion, that a special tribunal should be provided to exercise that jurisdiction in the one case and not in the other.

On account of the foregoing matters, and because it is unnecessary and would afford the shipper no relief, I am opposed to establishing a special court as proposed.

4. Special tribunal for railroads, not for shippers.

The court proposed would hear no cases under the act to regulate commerce except suits by carriers to annul the commission's orders. It would be a special court for the railroads, because no suit by the commission to enforce its orders is necessary, because its orders take effect under penalties, nor has any such been brought, so far as I am aware. Carriers will in all contested cases begin the proceedings rather than invoke penalties. No new remedy or powers are professed to be given this court for shippers or carriers. If it were conceivable that a shipper might go before such court in some sort of case seeking relief, no one can point to a case wherein any such hardship exists or demand for relief by court review for shippers as to justify establishing such a court, nor is that claimed.

5. Special court not demanded.

The shippers whose rates have been prescribed by the commission and contested in court, and whom we would expect to first complain, are not demanding it.

The Interstate Commerce Commission, charged with the duty of reporting needed amendments, have not recommended it.

Whence comes the demand for such a court?

If it exists on behalf of the parties directly at interest, it must be from the railroads, yet they have, it seems, been silent on the subject. That it is presented to you by the message of our honored President and at the suggestion of the honorable Department of Justice in a perfectly honest desire to benefit the public in the premises I have no doubt, but I can not believe it will accomplish any good to the public.

6. Will not be an expert court.

It is expected that it will furnish a court which will become expert in the trial of such causes. As to this the bill fails, because they are not to be selected in that view, and by the method of retiring each judge by the time he acquires expert knowledge that is excluded from consideration.

No improvement on this line is probable.

It will not be expected that the Chief Justice will endeavor to select these judges because of supposed leanings. If so, the very conception of it is founded in wrong and fraught with danger. If such a thing were conceivable (and it is not) that the Chief Justice

would stoop to that, no man of experience can doubt that soon the court would be made up of judges of pro-railroad tendencies.

Such a court can not be peculiarly expert as to what the law of the case is, because the Supreme Court will determine that. The bill does not propose that it try cases differently on the facts to present circuit courts.

7. The trial on the facts of each case.

The case on the facts must be proven in the usual way. The court is not given, and could not be given, power to find the facts from its own knowledge; if so, it would at the very outset supplant the commission by exercising its prerogative.

The court must take its facts from the proof before it in each case. So, what advantage can it have in that regard over the circuit courts? If it is supposed that it will give different weight to or draw different inferences from the facts than the circuit courts, in whose interest may it be supposed to do so? Would the public have any assurance of being benefited? Practically every rate case will be determined by an infinite multitude of detailed facts and opinions of witnesses pertaining to railroad operations, earnings, expenses, and rates. The bill does not propose that this court shall possess superior qualification to circuit judges generally to decide the questions of fact and could not do so. The Supreme Court will still be as supreme over such decisions, both as to law and facts, as it is over the circuit courts now.

The advantages, therefore, to the public of having this special court for expert purposes are not apparent, and it is not at all unlikely to turn out to be to the contrary.

8. Uniformity of decision will exist in circuit courts to same extent as in a special court.—Can only apply to general principles.

It is supposed that it will bring about uniformity of decision. This advantage is fanciful rather than real, because the Supreme Court will make what uniformity there is so far as the law and general principles are concerned; and as to the facts, it is absurd to talk about decisions of cases which rest on different facts being uniform on those facts. All courts will conform to general principles announced by the Supreme Court.

Don't forget that in every case involving the reasonableness of rates or whether a discrimination is unjust is purely one of fact. (See *Texas and Pacific Railway v. I. C. C.*, 162 U. S., 197.)

If the question is one of law, like the *Burnham-Hanna-Munger* case, or the *Chicago live-stock terminal charge* case, or the *coal car distribution* case, the Supreme Court ultimately determines it, and such decision will be followed by all courts.

9. The special court can not materially expedite the final disposition of cases.

It is said that the main object is to expedite the disposition of cases. In the first place, there has not been that delay in hearing cases in the circuit courts which would call for the establishment of a special court to remedy the evil. No provision of this bill on

that line is peculiar to a special court, which might not be as well applied to circuit courts.

In the second place, the delays in the Supreme Court are of much greater importance and are not possible to remedy, so long as it has so much important business requiring equal expedition.

Cases involving millions of dollars, and in which are wrapped up the material interests of communities, industries, and the great arteries of commerce, can not be guessed off. It takes much time and labor to prepare such cases for trial and to try them and to give due consideration to the facts. The commission's orders ought not to be set aside except on clearest grounds, in which both sides are fully presented by evidence of the most reliable character and after mature analysis and consideration of it. He who thinks this can be done quickly is in error.

Adapting the same latitude as to making proof—presenting the facts—and using that care which ought to be used by the court in getting at the facts, it is inconceivable to me that the special court can so materially expedite the hearing and determination of such cases as to make it worth while compared to the circuit courts. Particularly must this be true when the Supreme Court can not expedite these cases because it has so many of as much importance entitled to be expedited.

Will there be any material difference in the date of ultimate decision? That is conjectural and unlikely.

10. Expediting feature fanciful—Manner of trial—Use of master in chancery necessary and no improvement likely.

And, again, how is this new court to expedite a case? Are all the judges to sit in hearing each case—in taking the evidence? If so, while the court is hearing the evidence in a California fruit case what becomes of the fertilizer case in Florida; or while it is hearing a cattle-rate case in Texas, what becomes of the lumber case in Oregon? If judges each go out and take evidence in a case, when will the others read it? The question being one of fact, you must suppose each judge will read the evidence and analyze it, else it will be a one-man decision necessarily. Is that any better than to have a one-man decision out in the circuit from which the judges come?

If this court appoints masters in chancery to take evidence and report findings, what reason is there to suppose it will be done better than by masters appointed in the circuit courts?

I have no doubt that this court must, in most cases, appoint masters in chancery to take the evidence and report the facts, as is at present a prevailing practice recommended by the Supreme Court in the *Tompkins* case (176 U. S.), and that it is the only feasible way to do the business. That this will result in a set of masters is probable.

The case then will come on before the court upon the report of the master. It would be to him we should look as the expert.

From all of this practical view—and it must come about—it seems to me the expediting feature—indeed, the supposed advantage of the court at all—vanishes into thin air.

III.

1. *The commission should put its rate into effect and defend its orders according to its judgment.*

What good is an order of the commission prescribing a rate or practice until it becomes effective?

If the commission is competent to prescribe rates or regulations, and having that much interest and trusted with that responsibility, it ought to be competent to procure their enforcement or to defend them. The present law requires the commission to enforce the provisions of the act. Who objects?

Has any shipper objected to the commission having charge of the defense of its orders? Presumptively, the order in the first place is correct and lawful, and no power should exist anywhere short of the courts to decide otherwise. Is it a part of the scheme of correct regulation that after the commission makes an order the Department of Justice shall pass on the correctness of it?

On the facts, every suit to annul the order must be defended upon and by the facts gotten up by the commission, which, in the first instance, were proven or which it knew. That is the defense where the order is assailed on account of the dollars and cents involved, where the question is whether rates were made too low.

The commission should be charged with that duty and held to full responsibility of sustaining itself. No divided responsibility should be allowed.

Of course the Department of Justice presumptively knows the law, but it has no special knowledge of railroads, rates, etc., which would fittingly qualify it to say that the commission had not done its duty either in law or in fact, and that its order would or could not be defended. Nor should the law leave it where the commission, having made an order which is enjoined, might say that the Department of Justice didn't properly defend it.

2. *Responsibility and duty should not be divided. Dividing responsibility in such a case will leave it where no one can fix the responsibility.*

I assert that either in the commission's office or in the offices of the railroads exists practically all the evidence there is to defend an order of the commission against attack. If it exists elsewhere in peculiar cases the commission ought to know where to point to it; appoint its examiners to get the facts. To relieve that body of the duty of defending or enforcing its orders is not demanded by shippers or the public, and unless the railroads want it, who does? Who must benefit, in your opinion? What case has been improperly handled by the commission? It is absurd to say that the commission is a proper tribunal to fix rates, to investigate, to find the facts and make the order, and at the same time can not be trusted to defend its orders and have full charge of doing it, when the defense depends on the facts best ascertainable—only ascertainable by that body or in its office or by its agency.

The party complainant who succeeds in getting the commission to prescribe a rate will always be willing that the commission shall assume the responsibility and defend it in court, and to prepare the case to that end, or procure it to be done.

If complainant wishes to appear by counsel in court to sustain the order, no one should object.

Since the commission must prepare or have prepared the evidence, why should it not proceed according to its judgment in selecting a lawyer and agencies which it deems best to conduct the case, or call on the Department of Justice, at its discretion?

It is inconceivable that the commission should appropriately be authorized to employ attorneys in its own investigations to get at the facts on which it acts in making an order, and at the same time should properly be denied the power to do the same thing in getting at and presenting the same facts to defend it when attacked in court. What merit can there be in the expression that it should not be judge and prosecutor, where it is expressly authorized to make an order but not to defend it?

The proposed bill requires suits to set aside the commission's order to be brought against the United States. Why so? The act of the commission is one department only; others are not concerned. The only effect of this proposed change is that by doing so the Department of Justice, under general law, controls all suits against the United States, and that would leave the commission and the public with no voice, part, or responsibility except what the department exercises.

3. The commission should not be subservient to the Department of Justice.

To exclude the commission from handling its cases will prove to be a disadvantage to the public and an advantage to the railroads. It is the first step in the direction of bringing the commission's decisions into the political departments of the Government.

The commission must feel in the natural order of things that it should first inquire of the Department of Justice whether a given order is, in the opinion of that department, one that it will defend if attacked.

In the administration of this act the commissioners will differ in opinion and orders be made by a bare majority.

The wisest and best men differ on facts and law; the Supreme Court is an illustrious example.

Honest men do not like to urge propositions contrary to their judgment. Bearing these things in mind, it must result that instances will happen, most likely in most important and hotly contested cases, where the Attorney-General will differ from a majority of the commission as to the correctness of its decision, either as to its conclusions of law or facts. Honesty will command him to say so. The more honest he is the more he will feel it his duty to do that. What will be the result? Rather than spend \$10,000 of the Government's money to defend the case which is brought to set aside the order which he believes to be invalid, what will the Attorney-General do? What must he feel to be his duty?

How else can it be under the proposed bill than that the Department of Justice must therefore sit in judgment on the commission's

orders, at least in doubtful cases, without any full faith and credit clause applicable.

Let the commission control the litigation as the client for the public. Let the Attorney-General represent the commission, but according to its judgment.

Do not place the duty upon nor make it the prerogative of the Attorney-General to decide what shall be done with the commission's order.

I am not speaking of our present Department of Justice or any particular one when I say it is a political department, nor do I mean to criticise either. I mean that it will always be as it has been—made up politically by the dominant party with policies to suit that party. To relieve the Interstate Commerce Commission of responsibility and subject it practically to such political department would tend to disarm the commission and the shippers in times of political distress where considerations of that sort might be given the very greatest weight.

4. No discretion should be lodged in the Department of Justice as to defending the orders.

It must be constantly borne in mind that it is for the commission to determine what order is lawful and proper. The theory of the law is that its decision settles it unless it act beyond its power or so as to interfere with constitutional property rights. This latter is generally the ground of suits against commission's orders, state and interstate, and only the courts shall have the right to decide otherwise, and that because Congress can not otherwise enact.

The commission is as supreme in its department as Congress, and the complainant who brings the complaint and secures an order and the public has the right to have the order of the commission urged before the court as valid and with the same presumptions of rightfulness as an act of Congress. Yet, under this bill the Department of Justice would have the power to do as it pleases in the matter of defending such order if it concluded that it was not valid. It is no answer to say that it would not so exercise the power; if not, why should it be conferred?

If Congress makes the mistake of excluding the commission from defending its orders, then it is imperative that a proviso be added in substance as follows:

Provided, That every order of the commission shall be presumed to be lawful and proper, and it shall be the duty of the Attorney-General of the United States to defend and enforce it in all particulars as made.

If parties against whom such order is made shall deem it invalid, the law affords ample opportunity to move for a rehearing or modification by the commission, or it may modify or amend on its own motion.

It is no answer to this proposed amendment to say that the Attorney-General would naturally pursue that policy; for, if so, there is no harm in specifically so declaring in the law. The commission being peculiarly qualified to pass on the facts and circumstances, and to make its order accordingly, ought not to be embarrassed by the fear that it will not be fully defended to the fullest

extent on the full presumption that it is valid until the court otherwise decree, should the Department of Justice conclude that the order should not have been made.

The remarkable thing about this bill is that it provides in section 5 that "the Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation." Why not? Who would benefit by this provision?

It will have to take part to get up and produce the evidence or it can not be done. Could the Attorney-General employ one of the special attorneys of the commission under this provision?

Section 4 of the Townsend bill providing for suits to be brought against the United States, and section 5 of the bill, which gives the control of all litigation to the Department of Justice and excludes the commission therefrom, should be stricken out, and in lieu thereof the following, in substance, should be inserted:

It shall be the duty of the commission to prosecute all suits and proceedings necessary to secure the enforcement of its orders, and to defend all cases brought to set aside, annul, or enjoin the same, or any of its acts, proceedings, or requirements.

It shall be the duty of the Attorney-General of the United States, in person or by his assistants or special counsel which he is authorized to employ, and to fix their compensation, to be paid out of the appropriation for the Department of Justice, to prosecute and defend all suits brought to enforce, or to annul, set aside, or enjoin the orders of the Interstate Commerce Commission: *Provided*, That the Interstate Commerce Commission shall have the right to employ special counsel where it deems it to be necessary or proper in any such case or in any investigation or proceeding under this act or otherwise, in the performance of its duties, paying the cost thereof out of its appropriations: *Provided further*, That where any suit or proceeding is brought in any court to annul, set aside, or enjoin any order, rate, rule, or regulation prescribed by the commission, the party or parties to the proceeding before the commission resulting in the order shall have the right to appear in any such suit by counsel in behalf of sustaining such order, under such terms as the court may prescribe, as to the number of counsel and as to pleadings, production of evidence, briefs, and argument, so as not to interfere with the orderly conduct of the case by the Attorney-General or special counsel employed by him or by the Interstate Commerce Commission. Nothing herein shall be deemed to relieve the Attorney-General or district attorneys from other duties prescribed by law, nor to interfere with the court before which any such case may be pending from permitting parties interested in the controversy from appearing by counsel if the ends of justice shall seem to the court to require it: *Provided also*, That the commission, or Attorney-General in its name, may intervene in any case in any court of the United States wherein the powers, orders, or acts of the commission affecting the public are involved.

Thus the duty will be upon both the commission and the Attorney-General.

The foregoing amendment should therefore be incorporated in whatever bill is passed. Once incorporated in the law, there can be no doubt of the harmonious conduct of all litigation, and that the interest of the public will be fully protected.

IV.

The right of the shipper to be heard in court.

It is a fundamental principle of a free government that a party whose interest is directly affected by proceedings in court or before any other tribunal shall have the right to appear and be heard by counsel of his own choosing. While this is not directly denied in this bill, it is inferentially. Certainly it is not guaranteed. You might as well exclude the parties at interest as the commission. The

proceeding is not to be compared with other proceedings because they are dissimilar. Here the complainant affected directly it may be, if not, then acting in representation of those who are, files a petition with the commission and proceeds to present his case. The commission makes an order, we will say, reducing a rate, and the railroad company files a petition in court for injunction. The rights and interests of the parties, the facts on which they depend are practically identical before the commission and the court. This proposed law steps in and says the proceeding shall not be defended by the commission, but that it shall be brought against the United States, and that the Attorney-General shall take entire charge of it. Probably the case required weeks or months in preparation. Yet the complainant and commission must stand aside while the attorneys for the railroad, who are familiar with the given case, on five days' notice bring on a hearing on the facts for injunction and let it be handled by some attorney who could not possibly be prepared to do it from the want of preparation. Every such case—or practically so—depends on the facts, which are voluminous and difficult to understand and analyze. The result can be readily imagined.

The commission, knowing the case from its inception, can the more readily employ the means to defend it. Having the motive to sustain its orders, it will be best able to direct what to be done. The law wisely provides that it may employ special counsel, and it can best judge whether that is necessary in the given case.

These cases generally involve large amounts of money—even millions of dollars. The shipper is no less the real party at interest before the court than before the commission, and as such should have the right in the one case as much as in the other to appear and represent those rights, if he chooses to do so, in any court where the order of the commission is called in question. Of course, there is a public interest and the interest of other shippers, but they are identical and both rest upon the validity of the order. The interest which causes a complainant to file a petition with the commission and to prosecute it to a successful termination continues until the order goes into effect. While it should be the duty of the commission to put it into effect and defend it, there can be no doubt that the party complaining before the commission should have the right to continue to defend the same when attacked without asking anybody's permission, in exactly the same manner as if the proceedings were brought directly against him as a party defendant.

Let the present law be so amended that the real party at interest on the shippers' side may appear and defend his interest just as well as the railroad. It may be objected that as there are usually a number of complainants it would put too many lawyers in the case. That would apply more to the railroads. Each of them are, as the records before the commission will show, generally represented by separate attorneys, while the complainants generally are not, but as to that, the difficulty is imaginary, because the court constantly has that to deal with in a multitude of cases, and is entirely able to do it by rules made for that purpose.

It may seem, too, that to allow complainants' counsel to appear in court might conflict with the Attorney-General's control of the case, but that is fanciful, unless the Attorney-General should not wish to represent the case as made by the commission's order. Both

the attorney for the Government and complainant would necessarily have a common interest, viz, to enforce the commission's order, hence there could be no conflict so long as both pursue that course.

Now, who must get up the facts—the evidence, generally consisting of statistics and reports, examinations of books, calculations from figures evolved from records and books, requiring experts to make up and tabulate, work of accountants, engineers, stenographers, data pertaining to cost of doing business, profits, cost of labor and materials, not only on railroads but of the shippers' business.

It seems to me to be incomprehensible that the commission and its useful and efficient organization, accustomed to the work, should be relieved of doing this by law, and the parties at interest excluded from the case. I assert that no attorney can properly prepare and defend any rate case involving the ordinary questions as to facts indicated by the above enumeration without the aid of the commission's force—indeed, must rely almost wholly upon it.

Therefore, if the commission is relieved of responsibility, who can command it to prepare the necessary facts and put its special accountants or other agencies at work to dig them up? Shall the law deprive the shipper of his victory in that fashion?

It all comes to this: The real defense will be necessarily under direction of the different departments of the commission, who must show the attorneys what to do and direct what to prove and how to do it and why it should be done. It is a matter of fact, not of law; so it matters not how great a lawyer a man may be, he is not on that account, merely, capable to defend or represent such a case without detailed preparation of facts. He may search Blackstone or Kent or musty books in vain but receive no light; it is to be evolved from ascertaining the facts and developing the case from operating, traffic, financial and other statistics, and comparisons of rates and results of railway operation and business and commercial relations. This preparation has to be made by and through the commission.

The conclusion of it all is: (1) that in the first place this bill proposing the new court should not be passed; (2) the Department of Justice should not have exclusive control of cases brought to set aside the commission's orders; but the commission should control it; (3) if both positions be overruled and bills establishing such court and turning over these court proceedings to the control of the Department of Justice, excluding the commission, then there should be added an amendment in substance:

Provided, That parties complaining in the proceeding before the commission and who appeared and prosecuted the same shall have the right to appear by counsel before the court in cases involving the validity of the order of the commission, under such rules as the court may prescribe.

In fact, this provision is necessary under present practice.

V.

Review of typical cases in support of points urged in the foregoing argument.

1. In favor of empowering the commission to suspend tariffs and changes in rates.

A single reference will serve this purpose:

The Railroad Commission of Texas *v.* Atchison, Topeka and Santa Fe Railway Company et al., pending before the Interstate Commerce Commission.

On August 10, 1908, all southwestern lines advanced rates between Mississippi River and Missouri River crossings, the Lakes, and eastern territory about 7 per cent. That was the first advance in pursuance of a determination to make general advances elsewhere in the West.

Complaint was made by the railroad commission of Texas, and many shipping organizations and shippers intervened, not only from Texas, but from St. Louis, Chicago, and elsewhere. The commission spent several weeks taking evidence. The record is very large and covers railroad valuations, values of supplies, cost of labor, fuel, details of operating expenses, statistics as to finances, operation, capitalization; in fact, a compendium of statistics for 40,000 to 50,000 miles of railroads. Also as to water competition via the Atlantic seaboard, state regulation and rates, taxes, restrictive laws, etc., for half a dozen States.

In order even to be considered it was required to be abstracted and printed. That has been done, and it is set for argument.

In the meantime the Texas City Steamship Line from New York to Galveston put in lower water rates than those previously prevailing, so that much freight was shipped from Ohio and Mississippi valleys via New York and Galveston, and in many lines channels of trade diverted to Atlantic seaboard and trade enjoyed by merchants and manufacturers at St. Louis, Chicago, and Cincinnati was lost to them; in other cases they had to absorb the difference. This advance was by concert and agreement, and an agreement with the Mallory and Morgan steamships lines made in New York.

Now, that case illustrates two points:

First. That the commission should have the power to have stopped it until it could investigate it, and the right to have sufficient time to do it.

Second. That railroads should not be permitted to agree to any such advances and destroy competition.

The power to do so is the power to destroy commerce, industries, and communities. Indeed, in this case the rates were so advanced as to stop shipments on some articles of commerce produced at St. Louis, and turn over the trade to other concerns. The agreement also closed the high seas, dividing the territory in effect which must go via New York or Mississippi River crossings until the Texas City Steamship Company became a factor, and then the Mallory and Morgan lines met its rates.

I lay this down as an indisputable proposition: (1) These roads violated the anti-trust law in public and outrageous fashion; or (2) if

they did not, they exercised more power than ought to exist. If the former, they should have been prosecuted, as complaint on that ground was lodged at Washington with the commission and known to the Department of Justice; if the latter, then they ought not to place its stamp of approval on it by legalizing it.

The commission has held, and that has been sanctioned by the courts, that where rates are made by agreement and competition stifled, they are presumptively unreasonable. Shall we legalize that which has always been regarded as a restraint of trade?

A careful analysis of the proposition to permit agreements on rates between competing carriers will show that it legalizes monopoly and destroys competition.

What ought to be provided by law is no rates, classifications, or regulations, by competing lines on competitive business, shall be agreed on unless and except the schedules be submitted to the commission and approved, and then that while the rates become legal the agreement shall not be binding on anyone for any purpose. That is, the agreement should not go beyond agreeing to submit a scale of rates, classification, etc., to the commission, which become legal by being permitted to be filed, whereupon the agreement ceases, never having extended beyond the process of getting together the schedules to be filed. In fact, they do that now, with no supervision by the commission.

VI.

A case in court.

Missouri, Kansas and Texas Railway et al., v. Interstate Commerce Commission, in United States circuit court, St. Louis. Suit to set aside order reducing cattle rates.

This case involves the two questions:

(1) Whether rates prescribed from Texas, Oklahoma, New Mexico, and Colorado to principal cattle markets, Kansas City, St. Louis, Chicago, St. Joseph, Omaha, New Orleans, and from Texas, New Mexico, and Oklahoma to Northwest range States are unreasonable or confiscatory.

(2) Are they unjustly discriminatory compared to other rates?

After the case was decided by the commission, April, 1908, it gave the roads to understand that it would give them till July 1, 1908, to conform their schedules to the decision, which simply removed the advances made in 1903, leaving as the commission's maximum the rates previously in effect, which were as high as they had ever been, generally higher.

The railroads set to work getting up data for application for injunction. Not having taken any steps to conform to the decision, the commission in July issued an order prescribing a schedule of maximum rates, which, instead of obeying, the railroads in September filed an application for injunction before the circuit court of the United States at St. Louis, which came on for hearing, and in order to give time to hear and determine the motion for preliminary injunction, the commission extended the time for its order to go into effect till November 17, 1908.

The court refused to grant the temporary injunction, and the commission order went into effect and is now in effect. All of this required

much time and labor, and could not have been expedited more than it was by any court and deal fairly with the case and attorneys.

Thereafter, and in the early part of December, the court, having been notified that plaintiffs wished to proceed to take evidence and try the case on its merits, held a session to provide the method of doing it. Both sides agreed that it would take at least ninety days' actual work to take the evidence and considerable time in preparation of evidence and collecting it. The court decided to appoint a special master in chancery to take the evidence and report his findings of fact and law. Not long after that the master was selected, probably in January, 1909. About that time the commission was taking evidence in the Texas-St. Louis common point case, mentioned above, covering the same roads as were plaintiffs in the case in court, which was being prepared by the railroads, in the Interstate Commerce Commission office and by the railroad commission of Texas. Those hearings closed in February, 1909. The same counsel in part—that is leading counsel—were in both cases. The taking of testimony before the master began in March and was ended a few days before August 1, 1909. Thereafter there remained many documents to be prepared and filed to complete the case, which was done by September 1. The case was briefed by both sides and argued before the master October 21 to 28, inclusive. Since that date he has been engaged in making up his findings almost continuously.

The record is nearly 10,000 typewritten pages of oral evidence, 800 exhibits, many of them with many pages, exceeding in bulk and matter by far the oral evidence, containing, it is safe to say, millions of figures.

One might say, Why did you not use the record before the commission? The answer is, (1) We used a small part of it; (2) it was taken from one to two years or more before, and operating, financial, traffic, and many conditions had so changed that it would have been worthless to a large degree. The question before the court pertains to conditions mainly after the order took effect, November 17, 1908, and the year previous.

The case is alleged to involve a million dollars a year.

Now, take this recital as an object lesson and it proves:

(1) A court, special or otherwise, can not take its time hearing the evidence detailed.

(2) It can only proceed through a master or some such method.

(3) To exclude the commission from having charge of the defense and put in some one not familiar with the case, while the attorneys for the railroad continue right along with it, would be suicidal to the proper handling of the case and a manifest outrage on the shipper and the public.

(4) The shippers who prepared and prosecuted the case before the commission should have the right to appear and defend the order in court without consent of anyone, under such rules as the court should make.

(5) There could not be any more material expedition than already shown by a special court having other cases, compared to what the St. Louis court has accomplished.

(6) There can be no precedent decision to decide the main fact except those general principles as to which the circuit court and special court must alike look to the Supreme Court decisions to find

and apply; or, in absence of such, endeavor to evolve and apply such as that court will in the given case announce.

(7) The court can apply no expert knowledge of the facts in this case to one involving lumber, cotton, grain, or other traffic next year.

It may be said that this is an unusual case, but that is not true in the sense of the scope of it, the importance of it, the questions involved, or time and labor required.

For example, take the Texas rate case, first cited, and suppose the commission holds the advances wrong and orders in the previous rates, and the very same railroads and same attorneys sue to set aside the order. Similar facts, but for a year or more later, would be shown, and a similar course would take place. You must remember that, as I have before emphasized, the trial is on what it costs for the service compared to what the railroads get. Thousands of rates, hundreds of roads, an infinite number of conditions, operations covering years—all of it admissible and material on the main fact.

Again, take the Missouri case, tried in the federal court, Kansas City. The record is even greater than in the Cattle case. Take the Arkansas case, in which taking of testimony has been going on for some time. Both are dependent on the main question, What does it cost to perform the service, and what is the property worth?

Again, if the Burnham-Hanna-Munger case had been tried on lines required by the circuit-court decision, the whole rate system from New York to the Missouri River would be involved.

The quantum of evidence in such cases is almost without limit and can not be excluded. With auditors and clerks of various departments the railroads bring forth a mass of evidence which no one sees or knows in detail till it is presented in court. That it is made up from figures with a view to prove the railroads' contention no one will doubt. To meet it is the duty of the commission and the right of the shipper and the public.

VII.

Cases dependent on questions of law rather than facts.

1. Take the Chicago live-stock terminal case, decided by the Supreme Court November 29, 1909. (See the commission's review of the case in its annual report of December 21, 1909, pp. 31, 32, 33.)

The point decided was really one of law as decided, viz: That the terminal charge in itself being reasonable if considered separately from the through rate to which it always applied, the commission could not reduce it because the pay for the service was in fact embraced in the through rate except what the commission permitted the railroads to retain, where the tariffs separated the through rate and terminal charge.

The lesson taught here is—

1. The commission is practically without power to regulate special charges when imposed in addition to through rates, which previously embraced the compensation, unless the special charge is above the cost of the service and produces a profit in itself. In other words, it can not correct the wrong by requiring that it be righted where committed, but must permit it to go unchallenged or attempt to correct it in the through rate. It can not say that under the circumstances

no special charge imposed for switching or a bridge charge or re-signing charge is wrong unless it finds the amount of it excessive.

This should be corrected by so amending the act that the commission shall have power to decide that a special charge in addition to through rates shall not be made where, in its opinion, it would be unreasonable to do so, and to so regulate the amount of special charge as to make them reasonable when considered in connection with the through rate, whether in themselves reasonable or not.

1. In all such cases as this no special court could be of possible advantage.

2. The Burnham-Hanna-Munger case: This case was decided against the commission on the single point that it is without power to prescribe rates if the purpose and effect was to create artificial trade zones and disturb the established course of commerce. (See review of the case in commission's annual report.)

The limitation on the power of the commission as here announced is a question of law, and it requires a decision of the Supreme Court to determine it. Of what advantage would a special court be in such case over the average circuit court?

3. Take the Georges Creek coal case: Here the commission's order was attacked on the ground that the rates prescribed were unreasonable merely, there being no claim that they were confiscatory. A demurrer was sustained and that ended it.

The lessons are—

(1) No special court was necessary.

(2) To declare that a demurrer shall not be presented to such a bill is to impede the course of justice.

4. *Lessons from all the cases.*—Space forbids further reference to illustrative cases, but an examination of them all—and there are not many—will disclose that the foregoing are representative.

Wherein does experience thus reflected call for a special court?

Wherein does it show that the commission should not control the case?

Have the shippers interested complained against the commission for not having properly defended these cases?

What wrong has been done to railroads or shippers as to call for excluding the commission from these cases?

On the average, what assurance is there that the special court would have done better for the public good?

None other than a negative answer, looking at it from the standpoint of the public, can be given to these questions, except it be founded on the imagination.

VIII.

Special amendments affecting live-stock shipments.

There are received at the ten principal western markets over 800,000 cars of live stock per annum, and if there be added shipments to small markets and movements to ranges, pastures, and feed lots, it will exceed 1,000,000 carloads per annum. Good transportation service is vital.

Two things are most necessary: (1) That cars be furnished in reasonable time and with certainty, and (2) that good service be rendered.

On some roads this is done; on many it is not. Great loss results from bad service in either particular.

The detail of this matter has been several times fully presented to these committees, both in the Senate and House. I refer to hearings before the Senate Committee on Interstate Commerce, February 14, 1908, on the subject, "Prompt furnishing of transportation facilities," or Senate bill 3644, printed and a second edition issued as a public document. Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 13841, "Car shortage and reciprocal demurrage," on February 15, 1908.

Livestock organizations and shippers have repeatedly passed resolutions at public meetings demanding relief. They have sent experienced men half across the continent to inform the committees on the subject. This it would be useless to repeat, and now we point to this evidence contained in the above documents and ask of these committees that at least the Interstate Commerce Commission be empowered to make all needful regulations requiring exchange of cars between connecting lines forming through routes, and the furnishing of cars under rules to be prescribed by the commission, under appropriate penalties. And again, since slow and inefficient service is not only inhuman in most cases, but entails enormous losses, and since rates are based on reasonable service, which is as important as the rates, we ask the committees to also empower the commission to make rates and regulations to suit local and special conditions requiring a minimum speed limit for transportation of live stock wherever the commission deems that necessary to secure a reasonable service commensurate with the rate. The commission may prescribe a maximum rate for live stock. That means a reasonable rate for reasonable service, but where railroads, as they in many instances do, give an unreasonably slow service, the rights of the shipper are injured far more than if an unreasonable high rate was charged for reasonable service. The matter should be in the hands of the commission, for the rate is inseparable from the service. Once the power is given, it will be seldom exercised, for the roads will improve their service where need be, to avoid complaint to the commission, which may result in an order prescribing a minimum speed limit on a given road or through route and as to each road in that route.

We will submit in definite form to the committees the specific proposed amendments on the subjects.

(Thereupon, at 11.45 o'clock a. m., the committee adjourned, to meet Monday, February 14, at 10 o'clock a. m.)



HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON BILLS AFFECTING

INTERSTATE COMMERCE

PART XVII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES.

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BILLS AFFECTING INTERSTATE COMMERCE.

COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Monday, February 14, 1910.

The committee met this day at 10 o'clock a. m., Hon. James R. Mann (chairman) presiding.

The CHAIRMAN. Is there any one here to be heard on the excess baggage bill, in favor of it?

Mr. HENRY P. DEARING. We simply understood there was someone to appear who would say why that bill should be passed.

The CHAIRMAN. Yes. We want to hear the proponents of the bill.

Mr. DERING. We want to hear some reason for the passage of the bill.

The CHAIRMAN. Is there any one here to be heard in behalf of the Coudrey excess-baggage bill?

Mr. DOUGLAS DALLAM. Yes, sir; Mr. Conboy, of New York, and one or two representatives who are on the way here.

The CHAIRMAN. You may proceed, gentlemen. It is our meeting time now, 10 o'clock. If anyone wishes to be heard, he can be heard now.

STATEMENT OF MR. S. W. CAMPBELL, OF CHICAGO, ILL., SECRETARY OF THE NATIONAL SHOE WHOLESALERS' ASSOCIATION.

Mr. CAMPBELL. With your permission, Mr. Chairman, I will read what I have to say.

The CHAIRMAN. Please take your place at the end of the table. First, tell us who you are.

Mr. CAMPBELL. My name is S. W. Campbell, of Chicago. I am secretary of the National Shoe Wholesalers' Association.

Mr. Chairman and gentlemen, we are before you to ask your favorable consideration on House bill 1491, relating to excess baggage. The purpose of this bill is solely to legalize as baggage, the same as personal baggage, commercial travelers' samples in all interstate traffic. At the present time commercial travelers' samples have no legal status whatever, either under federal or state laws, except in Indiana, where there is a law defining such samples as baggage. The manufacturers and wholesalers we represent need this law because when the carriers are asked, as they frequently have been, for interchangeable excess-baggage books, good on all lines within the territory covered by any one of the passenger associations, or for a reduction of the present excess-baggage rates, they decline to grant either request.

We are informed that a strict construction of the present baggage tariffs would exclude our traveling men's trunks containing samples; that in fact it is a direct violation of the interstate-commerce law, subject to all the penalties, for the carriers under present tariffs to carry commercial travelers' trunks as baggage. It would be of great inconvenience to have our traveling men's sample trunks refused by reason of this law, which the carriers could do at any time should they feel disposed. Hence the necessity for the enactment of the bill we are asking you to favorably report out of your committee to the House.

In our opinion the final solution of this question lies in a separate classification for commercial travelers' samples, with an increased allowance in the number of pounds to be carried free, over ordinary personal baggage. To procure this will require considerable time. In the meantime give us legal rights, by recognizing our samples as baggage, that will enable us to protect ourselves against loss, and that will put us in a position to demand more reasonable rates than we now have.

These rates, by the admission of the carriers themselves, are so high as to enable them to offer a discount of from 20 to 33½ per cent to purchasers of excess baggage coupon books good on one single line of railroad. This offer is not practicable, because it ties up funds invested in these books altogether out of proportion to the benefits received. But these offered discounts show the enormous margin of profit to the carriers that there is in transporting excess baggage, completely contradicting the statement made by the Central Passenger Association that the present excess baggage rates are insufficient to cover the cost of the service.

A much larger part of the trade of the country is procured by traveling salesmen than is generally supposed by the average citizen. Seventy-five to 90 per cent of the necessities of life, food, raiment, household effects, etc., are sold by manufacturers and wholesalers to retail dealers through their traveling salesmen. Almost 100 per cent of these necessities that are sold by traveling salesmen are sold from samples that they carry with them. Fifty to 75 per cent of these samples are in weight in excess of the amount they are allowed to carry free of charge. This overplus is called "excess baggage," although the carriers do not recognize it as either freight or baggage, except in Indiana, where the law recognizes these samples to be the same as personal baggage. The manufacturers and wholesalers of the country whose salesmen necessarily carry excess baggage believe that it would be no injustice to the carriers to have these samples legalized as baggage.

In order to complete our statement, we must briefly enter into details in order to illustrate why we desire that this bill should become a law. To that end, permit us to give you a few facts and figures, compiled from reports received by our association from shoe manufacturers and wholesalers located in almost every section of the country. I am speaking now for the shoe interests only.

The average shoe salesman carries about 550 pounds of samples, 400 pounds of which are excess. Fifty per cent of his traveling expenses is for hotel bills and sundry expenses combined; 30 per cent for railroad fares; and 20 per cent for excess baggage charges. In

other words, the manufacturers and wholesalers of shoes are to-day paying the carriers two-fifths as much for excess baggage as they are paying for hotel accommodations for their salesmen, and two-thirds as much for excess baggage as they are paying the railroads to transport their salesmen. In many instances the excess baggage charges are more than the railroad fares.

There are in the United States about 2,000 shoe manufacturers and wholesalers, many of these being both manufacturers and wholesalers; but the salesmen of only about 400 concerns carry excess baggage to any extent. It costs these 400 houses an average of \$7,000 each per year for excess baggage charges, the amounts running from \$48,000 to \$350. This makes a total of not less than \$2,800,000 paid by the shoe manufacturers and wholesalers each year to the railroads on this one item of expense, on which by their own admission there is profit enough to the carriers to justify them in offering, on certain conditions heretofore named, a discount of 20 to 33½ per cent on present excess baggage rates. We are seeking relief in a fair and legitimate manner from this burden.

I thank you, gentlemen.

Mr. STAFFORD. Just one minute. Will you explain more in detail the practice of railroads in issuing these baggage coupon books or mileage books for excess baggage, and state whether the railroads generally issue that character of mileage?

Mr. CAMPBELL. A good many roads issue individual mileage baggage books, good on their own line only. That would require, on the part of a large house employing a man who covers a large amount of road, an investment in eight or ten of those books.

Mr. STAFFORD. What is the charge for that character of mileage books?

Mr. CAMPBELL. They give a discount on that.

Mr. STAFFORD. Is it the same character of mileage book as is sold to the public generally for the transit of themselves?

Mr. CAMPBELL. Oh, no. This is for the excess baggage.

Mr. STAFFORD. What is the rate of charge? If you do not know, never mind.

Mr. CAMPBELL. The rate generally runs about 12½ per cent of the cost of the ticket.

Mr. DALLAM. The books are sold at \$15. That is the value of the coupons.

Mr. STAFFORD. Somebody else who is better acquainted with the matter can answer?

Mr. CAMPBELL. Yes; Mr. Dallam and Mr. Sigler are better acquainted with that question than I am.

Mr. STAFFORD. Are you acquainted with that subject?

Mr. CAMPBELL. Not so well as these other gentlemen.

Mr. STAFFORD. Have you anyone here who will speak of the question as to whether the railroads consider themselves liable for damages for loss of baggage to the extent of 150 pounds?

Mr. DALLAM. We have witnesses on that.

The CHAIRMAN. Very well. We will hear the next witness.

STATEMENT OF MR. W. H. SIGLER, OF CLEVELAND, OHIO, REPRESENTING THE NATIONAL WHOLESALE DRY GOODS ASSOCIATION.

The CHAIRMAN. Give your name and what you represent.

Mr. SIGLER. My name is W. H. Sigler, of the Root & McBride Company, of Cleveland, Ohio, representing the National Wholesale Dry Goods Association; also member of a committee appointed by a convention held at the Waldorf-Astoria Hotel on this subject, and composed of representatives of the National Wholesale Dry Goods Association, the National Hardware Association, the National Board of Trade, the National Boot and Shoe Association, the National Shoe and Leather Association, the United Commercial Travelers, and the Travelers' Protective Association.

The CHAIRMAN. When was that convention held?

Mr. SIGLER. On the 20th of October, 1908. That convention appointed a special committee to draft a bill regarding the carriage of excess sample baggage and to present the same to Congress. The subject has been under discussion since that time, and has been embodied in House bill 1491, introduced in the House. In accordance with the instructions given, this committee formulated and introduced, through Mr. Coudrey, the House bill 1491, introduced and referred to this committee on March 17, 1909.

This bill in section 2, lines 14 to 22, specifies:

That the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers and used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling, are hereby declared to be sample baggage within the meaning of this act, and such carriers are required to transport the same with the passenger as required by this act.

That in the main and in substance is the purport of our petition.

Mr. STAFFORD. I assume that the associations which you represent and have enumerated are in favor of this bill?

Mr. SIGLER. I am here as a member of that committee and appointed by them.

Mr. STAFFORD. I assume that those associations desire the enactment of House bill 1491, and not the subsequent measure introduced by Mr. Coudrey, No. 16019?

Mr. SIGLER. The two do not conflict.

Mr. STAFFORD. Which one is the association advocating?

Mr. SIGLER. The associations I have named authorized the committee to formulate this bill, and it was submitted to the different associations and received their approval. The resolution upon which it was given to the committee was unanimous.

Mr. STAFFORD. Has the committee considered the later draft which is somewhat different, as embodied in House bill 16019?

Mr. SIGLER. They have considered it to this extent, that it is a specific rate-making measure, which would hardly, in our estimation, be considered by Congress. It is a definite rate-making measure.

Mr. STAFFORD. So that the committee of the associations you represent are concentrating their efforts on House bill 1491?

Mr. SIGLER. Yes, sir.

The subject of sample excess baggage presents one of the most striking anomalies in the transportation system of the country.

This traffic involves the payment of hundreds of thousands of dollars every year by the merchants and manufacturers and commercial men of the country, and the receipt of that sum by the railroads is an illegal traffic. The railroads of the country have no right, in our opinion, to accept and transport merchandise samples as personal baggage, and the merchants, manufacturers, and commercial men have no right to offer this sample baggage under the implied but false assumption that it is personal baggage, and the judiciary of thirty States, I may say on the authority of the attorney-general of Indiana, have decided that this is correct, that merchants' samples are not personal baggage.

Mr. STAFFORD. What do you mean by saying the judiciary of thirty States, on the authority of the attorney-general of Indiana, have decreed that it is not personal baggage?

Mr. SIGLER. No; he has not decreed it, but I say that on his authority. I do not know personally that that is the fact, but on his authority as taken from Mr. Gettys, the chairman of our committee on excess baggage. That is his statement.

Mr. STAFFORD. I suppose you mean that the supreme courts of those States have decided that it is not regarded as personal baggage, regardless of the opinion of the attorney-general of Indiana?

Mr. SIGLER. Oh, yes. He did not authorize it in any way. I simply gave him to you as the authority. My own authority would not carry very far in a legal matter.

Until this question as to the legal standing of the interstate traffic in excess sample baggage is settled by act of Congress, no progress can be made in the adjustment of the matter between the railroads and the merchants, the commercial traveling man, and the States.

Mr. KENNEDY. Do the railroads object to carrying more than 150 pounds of baggage?

Mr. SIGLER. No, sir. We carry in some cases 2,500 pounds, worth at times \$2,000.

Mr. KENNEDY. There is nothing in the law that prevents the railroad from carrying your baggage to any extent, is there?

Mr. SIGLER. No, sir; but we are carrying it under a false assumption. They openly say to us, "We do not know that they are samples that you present to us. They are covered and in a trunk, and are presented as any other tourist's baggage."

Mr. KENNEDY. They charge you as much for that, do they, as any other sort?

Mr. SIGLER. Just the same.

Mr. KENNEDY. You do not expect to have it carried any cheaper?

Mr. SIGLER. No, sir; we are not after that at all.

The CHAIRMAN. Do you want to have the railroad companies made liable in case of damage or destruction of your baggage?

Mr. SIGLER. No.

Mr. KENNEDY. They are liable now?

The CHAIRMAN. No.

Mr. SIGLER. As a matter of practice, they will pay for any samples that are lost.

The CHAIRMAN. As I understand it, they do not admit liability except on personal baggage.

Mr. SIGLER. No, sir. On sample baggage they do not admit that liability. We are simply in their hands.

Mr. STAFFORD. Do they admit liability up to the extent of 150 pounds?

Mr. SIGLER. As personal baggage?

Mr. STAFFORD. Do they admit liability when you attempt to recover damage for loss, whether they regard it as personal baggage or commercial travelers' samples?

Mr. SIGLER. They would not admit any liability as commercial travelers' samples.

Mr. STAFFORD. Suppose a loss occurs. There must be numerous instances of travelers' baggage consisting of samples not in excess of 150 pounds. Do the railroads make any allowance to the concerns for that loss?

Mr. SIGLER. Yes; but they will tell you at the same time that they do this only as a matter of friendship to you. It is really a matter of policy, merely, with them.

Mr. STAFFORD. They do not refuse to reimburse you to the actual loss up to that extent?

Mr. SIGLER. I have not known of an instance.

Mr. STAFFORD. Do you know of instances where they have refused to reimburse you for the loss on excess baggage over 150 pounds?

Mr. SIGLER. No, sir; we have no quarrel with the railroads in this matter.

Mr. RICHARDSON. What do you want, then? What is the matter, then?

Mr. SIGLER. We want this traffic legalized.

Mr. RICHARDSON. Is it not a fact now that when a man buys a ticket to go to any place he has the right to carry 150 pounds of baggage without paying any excess? Do you want to be allowed to carry baggage over 150 pounds?

Mr. SIGLER. Yes; but we expect to pay for it, though.

Mr. RICHARDSON. You want to legalize what?

Mr. SIGLER. To legalize the traffic. You will understand within the limits of the State the State is supreme, of course, and in the State of Indiana——

Mr. RICHARDSON. Not in interstate commerce. In interstate commerce the State is not supreme.

Mr. SIGLER. In the limits of the State of Indiana the State is supreme, and she has passed a baggage law and a mileage law, and they are working well, and there is no complaint, I believe, and no suits have been brought against the railroads in the matter.

Mr. RICHARDSON. What kind of a law is that in Indiana? I do not know anything about it. Is that the kind of law you want here now?

Mr. SIGLER. No, sir; you could not pass it here. I should judge you could not.

Mr. RICHARDSON. If it is interstate commerce, you could.

Mr. SIGLER. No, sir; the Interstate Commerce Commission has replied to the baggage association—I have their exact words here—to this effect: "The commission will not have power by general order to reduce rates on excess baggage for all carriers throughout the United States. It has jurisdiction of complaints of unreasonable rates charged by particular carriers."

That is their position. Now, if we want this law legalizing the traffic, then we will not meet the misfortune that would happen if we

rely wholly upon state laws. When you are within the limits of the State you are all right, but when you get there and cross the line you come into interstate commerce.

Mr. RICHARDSON. The traffic is legal in and out of the State now?

Mr. SIGLER. No, sir.

Mr. RICHARDSON. Then you are engaged in traffic that is violating the law?

Mr. SIGLER. Yes, sir.

Mr. RICHARDSON. How are you violating the law?

Mr. SIGLER. Because we are asking the railroads to check samples and merchandise as personal baggage. They close their eyes and say: "We will do this, as we understand that it is personal baggage."

Mr. RICHARDSON. What do you mean by other kinds of baggage?

Mr. SIGLER. Samples and specimens of goods as distinguished from personal baggage.

Mr. KENNEDY. Where do you get this idea that this conflicts with any law in doing that?

Mr. SIGLER. From the railroads themselves.

Mr. KENNEDY. I understand that. Let me tell you a little incident that came to me, coming from Columbus, last winter, to Washington. I was told by the ticket agent of the Pennsylvania Company, who was also the Pullman car man, that he could not sell me a berth from Columbus to Washington on a ticket over the Pennsylvania lines to Pittsburg and mileage from Pittsburg here. I asked him why. "It would conflict with the law made down at Washington," he answered. Now, that, in my judgment, was simply an effort of the railroad to make sentiment against railroad-rate legislation. There existed no law that prevented them from doing that, yet they instructed their ticket agents to tell the traveling public that there was a law against it. Did not the railroads carry this excess baggage before the passage of the rate bill?

Mr. SIGLER. Interstate?

Mr. KENNEDY. Yes.

Mr. SIGLER. Yes, sir; and carried it for less than they do now.

Mr. KENNEDY. Do you think there is anything in the rate bill that prevents them from doing it now?

Mr. SIGLER. Yes, they are discriminating.

Mr. KENNEDY. Do they tell you where it is?

Mr. SIGLER. No; they do not tell us any more than this: They reject altogether the idea of responsibility for checking trunks of samples as samples. That is the idea of this legislation and of these decisions that I have spoken of.

Mr. RICHARDSON. It goes all right until you sue for it?

Mr. SIGLER. Yes, sir; that is a bad situation, as you will realize.

Mr. RICHARDSON. The carriers make no discrimination in the charges for baggage for anybody, and you make no complaint on that; and everything is happy and bright with the railroad except this one complaint?

Mr. SIGLER. Except this one thing.

The CHAIRMAN. Let me see if I can straighten this thing out. You say this is now contrary to law. Of course you can not point to anything in the law on the subject. The railroads now carry your excess baggage and your sample baggage as personal baggage, having made

no regulations for the carrying of any baggage except personal baggage. Is there anything in the law that would forbid the railroad company carrying any samples as baggage for anyone?

Mr. SIGLER. In the interstate commerce law?

The CHAIRMAN. In any law.

Mr. SIGLER. I have their authority that there is.

Until this question is settled by act of Congress, no progress can be made in the adjustment of the matter between the railroads and the merchants and between the commercial traveling man and the States.

We do not come here, gentlemen, with any desire to harass the railroads nor to cut down their profits to a vanishing point on this traffic. In point of fact, before the interstate era of national control began on our railroads, many of the railroads were doing 20 or 25 or 33 per cent better on excess rates than now. That is true of the railroads embraced within the Central Traffic Association, running from central Ohio to the Missouri River and north of Ohio. The roads were then issuing excess-baggage books to the mercantile traveling public with the discounts I have named. These discounts were recalled by the roads, not because of the discrimination, but for want of patronage, which was due to the fact of their books being noninterchangeable, making it necessary to supplement one purchase by many others.

Mr. STAFFORD. Have they been withdrawn entirely?

Mr. SIGLER. Yes; by the Central Passengers' Association.

Mr. STAFFORD. How generally were they in use before?

Mr. SIGLER. Not very largely. They withdrew them.

Mr. RICHARDSON. Because they did not have patronage?

Mr. SIGLER. Yes.

Mr. STAFFORD. What reason was there for the rebate of 20 and 25 and 33 per cent?

Mr. SIGLER. It was on the ground that the traveling man is a freight maker. Every bill he makes is a freight bill.

Mr. STAFFORD. Was there any discrimination in these rebates where the rebates were given?

Mr. SIGLER. No; they would be given to you the same if you were an ordinary tourist or if you were a commercial traveler.

Mr. STAFFORD. To whom was the full rate charged?

Mr. SIGLER. To the man who did not know, or did not want to buy the ticket.

Mr. STAFFORD. What I want to know is whether a different rate was charged to the public from that charged to the commercial houses?

Mr. SIGLER. No, sir; the books were always open before the passage of the interstate-commerce law. There was no effort to get them to the public or to give the public any notice of their existence; but after that there was.

Mr. STAFFORD. Was there any limit of time on the life of those books as upon passenger mileage books generally?

Mr. SIGLER. There was a liberal allowance on that. I do not know what it was.

Mr. STAFFORD. This has given place to the interchangeable ones?

Mr. SIGLER. Yes.

Mr. RICHARDSON. You are calling attention now to another matter where you want uniformity?

Mr. SIGLER. Yes; we want this clause enacted legalizing the traffic after that.

Mr. STAFFORD. Leaving out the rebate, the furnishing of these books was only a convenience to the commercial houses?

Mr. SIGLER. Principally, yes; because no others used that amount.

Mr. STAFFORD. And you are in the same situation to-day, except so far as the baggage is accepted, although you have not this convenience of scrip or discount?

Mr. SIGLER. Yes, sir; that is the situation. Our objects in asking for the passage of this bill are uniformity and reasonable charge and interchangeability. Proper classification and correct legal status of the excess sample-baggage traffic are the remaining two points. The one overruling point is the question of legal status. When asked for concessions based upon the volume and freight-making power of the samples carried, the railroads have invariably replied that they could not discriminate between the commercial men's and tourists' traffic without making themselves liable under the interstate-commerce law.

They further called attention to the fact that their only alternative was to concede it on the whole traffic and lose in receipts from the 60 per cent tourist traffic—an uncalled-for reduction—for the sake of obliging the 40 per cent of commercial traffic; for in spite of the prevalent impression this is practically the ratio between the two classes of trade, 60 per cent of tourist and 40 per cent of commercial. If they concede it to merchants and those who carry large amounts of baggage, they would have to concede it on the 60 per cent of tourist traffic—people who were simply running from one point to another once a year or less, or perhaps more, over a certain line.

Mr. RICHARDSON. Now, are they engaged in the practice? For instance, do they make any difference in the charge for a hundred pounds of baggage owned by a tourist and one hundred pounds of baggage owned by a commercial drummer?

Mr. SIGLER. No, sir.

Mr. RICHARDSON. They do not make any difference in their charges at all under the Hepburn rate bill?

Mr. SIGLER. You seem to be seeking for my point in this matter. It is this: That with this traffic legalized, then we can make an adjustment in the States between the railroads and the mercantile people which will not conflict when we get outside of the state lines with interstate commerce.

Mr. RICHARDSON. The idea I had in mind with respect to your statement is that as to that proposition—the hypothetical suggestion I made to you regarding the baggage of the tourist and the baggage of the commercial man—the charges for the same are absolutely settled by the law now. If the railroad goes and charges a tourist on his baggage more than it does a commercial man, it is making a discrimination for which the common carrier is liable to punishment?

Mr. SIGLER. Yes; that is true. But except in the State of Indiana, which is the only State which specifies what the rate shall be, it is a matter of initial action in that case from the railroad.

Mr. STAFFORD. Do you make any claim, by reason of the different character of the excess baggage used by the commercial travelers from that of excess baggage used by the traveling public generally as personal baggage, that there is less responsibility entailed upon

the carriers in the carriage of the drummer's samples than in the carriage of the personal effects of the ordinary passenger, where the carrier is liable as an insurer to the extent of the personal effects that are needed on that voyage or journey?

Mr. SIGLER. There is no difference in that case except in the minds of the railroads. You would not care to do business on a basis where the other party in the transaction can at any time fly the track and say to you: "We will not discuss this matter; we are not responsible. We will let it go." The only thing that prevents the railroads from doing that now is this question of policy. They know that if they did that, they would incur the disapproval and hostile action of the merchants all over the country. They would rather do it as a matter of policy.

In England merchandise sample traffic is in a class by itself. That is just what we are trying for in this case. I have a copy of an English tariff here which puts ordinary passengers' luggage in Class A and commercial travelers' luggage in Class B. This is a copy of a baggage tariff sent from England. It takes in Class A ordinary passengers' luggage and gives the charges, one-quarter, one-half, three-quarters of a pound or more, and commercial travelers' luggage just half those rates. That is, the rates on Class B are just one-half those on Class A.

Mr. STAFFORD. There must be some reason for that classification and for the minimum charge for the commercial traveler's baggage under the rates for personal traveler's baggage.

Mr. SIGLER. Yes, and there is; and we find it in the fine sense of fair play that rules among the English people.

Mr. STAFFORD. I was trying in the first place to ascertain whether there was anything in the way of a difference in this country in the nature of baggage carried as personal effects, carried by the public generally, and the samples carried by the commercial travelers; whether there is any difference in the character of the baggage, and you replied that there was not.

Mr. SIGLER. I must have misunderstood your question, because I have stated that the sample baggage is a freight maker. It makes freight, and everybody should so understand, whether on the directory of a railroad, or in cars, or anywhere else.

Mr. STAFFORD. Is there not this difference, also—I am speaking for information—that per hundred pounds commercial baggage is in value less than a hundred pounds of personal-effects baggage?

Mr. SIGLER. That would be very hard to answer. I was told of a piece of sample baggage not long ago that was worth \$2,000. That was the actual value, and every part of it could be taken out of the trunks and sold. Now, in the case of samples cut in pieces and put on a roll, merchant's samples, that may have only a temporary value, but its principal value is its value to us as salesmen, using it for the time being. Then at other times samples are sent out in a large piece, and that, of course, has a direct intrinsic value.

Mr. KENNEDY. The cost of hauling this baggage is not, perhaps, so great per pound as the hauling of the ordinary travelers' baggage, because the commercial travelers' sample baggage usually goes in a solid block of big trunks, which can be loaded and unloaded at one point, and the expense of handling that, to the railroad, would be

much less than a like number of pounds of small packages, would it not?

Mr. SIGLER. I have not so considered it. But there are more returns to the railroad from the commercial traveler.

The CHAIRMAN. I suggest that we are getting rather limited for time.

Mr. SIGLER. Very well, sir.

The CHAIRMAN. I am not speaking to the witness.

Mr. SIGLER. Here we have the legal principle of a division of the traffic into separate classes and the application of a higher rate for ordinary travel, discriminating in favor of commercial traffic, in long-standing use, and yet the sturdy English sense of justice and fair play makes no protest. If you have a specific rate covering all the United States railroads, near and far, prosperous and bankrupt, under one uniform charge, you are violating a provision of the interstate-commerce law, that you can not compel any railroad to handle traffic at a loss.

In 1887 the Interstate Commerce Commission was established. For ten years it heard and determined cases of complaint by shippers or railroads. It made rates, adjusted differences, and did good work. In 1897 the decision of the Supreme Court, in the case of the New Orleans, Texas and Pacific Railroad *v.* the Interstate Commerce Commission, took away that power. It took ten years of most intense endeavor and agitation by over 500 trade organizations, chambers of commerce, and individual shippers to get back to the Interstate Commerce Commission this rate-making power. What chance is there that Congress by direct action against precedent will step in and establish specific commercial rates? The commission has replied just what I have read to you. It is very evident to a student of this subject that there is good ground for complaint of the rates charged as well as for the removal of legal discrimination that touches the traffic. I will ask that you allow me to read a part of an address from one of our associations before the Travellers' Protective Association at Milwaukee; as to some matters of traffic that we could control if we had a legal standing in the courts. [Reads:]

AN ARGUMENT BEFORE THE TRAVELERS' PROTECTIVE ASSOCIATION OF AMERICA AT THEIR CONVENTION, MILWAUKEE, JUNE 24, 1908, AS REPRESENTATIVE OF NATIONAL WHOLESALE DRY GOODS ASSOCIATION.

GENTLEMEN: Somewhere back in the classics there is an aphorism which runs: "The gods grant their favor to him who can define." Of later date, and from a clerical source, we have the epigram: "Next to the grace of God comes the ability to distinguish between things that differ." After a careful canvass of opinion among commercial traveling men, employing merchants, railroad officials, and statisticians, I am prepared to believe that it requires a bountiful endowment of both qualifications to make appreciable progress in the question of excess sample baggage transportation. The power of a wrong definition to sidetrack the most carefully formed conclusions and to finally derail a whole subject among the bogs of prejudice and misinterpretation has been well exemplified in the campaign to correct the evils attending the transportation of sample baggage.

The question has been treated by the railroads of the country in the wrong way. Not illiberally at all times; not with malice aforethought at any time; but upon inaccurately defined bases, resulting in alternate periods of injustice to both sides.

The first error in defining the railroad status of the "goods, wares, and appliances used by traveling men as samples" was in classing them as personal baggage. Self-evidently they are not personal baggage and the judiciary of 30 States have so declared.

Next in line of misinterpretation of our subject comes the attitude on the part of the railroads of a temporary toleration, of a desire to keep excess sample baggage within closely circumscribed limits—eventually to reduce it to an impractical minimum or turn it over entirely to the express companies.

At a hearing before the Central Passenger Association on this subject, attended with very few exceptions by the general passenger agents of the whole Central Passenger Association territory, and in a written report presented by a committee of the general passenger agents, replying to arguments presented by the cities of Buffalo, Chicago, Cincinnati, Cleveland, Columbus, Detroit, Pittsburg, and Toledo, the following official presentations were made:

First. The present basis of excess baggage is insufficient to cover the cost of the service.

Second. The legitimate obligation of the transportation line to its patron is fulfilled by the carriage of personal baggage and wearing apparel, and stocks of merchandise should be barred.

Third. That present excess arrangements already encroach upon the rights of the express companies, and that further liberties will not be tolerated. I am quite sure the report said "tolerated."

Fourth. The baggage allowances and privileges of this country are already superior to those of other countries, and further grants to traveling men will impair the passenger service.

Here you have the whole official point of view presented in written form over the signature of a committee of its general officers. In condensed paraphrase the replies are:

First. It doesn't pay.

Second. It is not our business.

Third. The traffic belongs to the express companies.

Fourth. We do better here than is done abroad.

There should be no hesitation in conceding to our railroads superiority in the mechanical transportation and handling of baggage on trains. Their methods are up to date, convenient, and prompt, and should be commended. But so long as official action upon excess baggage matters is in its general trend based upon the arguments here presented there will be maladjustment in the results and discontent on the part of the merchants and traveling men of the country.

The statistics for all railroads in the United States up to January 1, 1907, have been tabulated and are now available. For the year 1906 the average per passenger per mile was 2.01 cents; for the twelve years preceding this, there was an average of 2.03 cents. For 1906 the average receipts per passenger train mile were 106.4 cents, as against a grand average of 88.7 cents for the twelve years previous.

The average receipts per mile of railroad for 1906 were \$2,379, against a grand average of \$1,761 for the twelve years previous.

The gross revenue received in 1906 for passenger traffic was \$519,826,434, against a grand average of \$340,385,517 for the twelve years previous.

The miles operated in 1906 were 218,476 miles against an average operation of 191,226 miles for the twelve years previous.

The percentage of operating expense to combined earnings, passenger and freight, for the year 1906 was 66.33 per cent, against a grand average for twelve years previous of 68.79 per cent.

Certainly this is not a bad showing for the first year of effective 2-cent-a-mile operation and explains the complacent attitude of the railroads upon this subject. There would seem to be but little justification for \$100,000,000 advances in freight rates as proposed, or for any addition to charges for excess sample baggage transportation.

Another misinterpretation in the treatment of excess sample baggage has been the contention that tourist and commercial traveler must be treated exactly alike in weight and schedule charges to save the appearance of illegal discrimination.

Discrimination is not always an evil. A proper discrimination in many cases is true justice. In equity the tourist and the traveling man are not on the same basis, and if there is anything in the official railroad regulation or legal status which considers them inevitably so, it should be changed at once. This is a vital point and any reform of the present system should start here.

It will be remembered that the fourth presentment of the general passenger agents' committee recites that the baggage arrangements and privileges in other countries are superior to ours and claims immunity from further grants for this reason.

I have at hand a circular sent to Mr. F. T. Day, acting chairman of the excess baggage committee of the National Wholesale Dry Goods Association, by Consul-General Griffiths, of Liverpool, which does a very simple, yet a very radical and most effective thing in excess sample baggage transportation. It classifies excess baggage in a separate class with a separate schedule and allowances peculiar to the traffic.

Excess sample baggage is as reasonable a subject for classification as fares or freight. The application of such a classification does away at once with all charge or chance of illegal discrimination. The English schedule places "ordinary passengers' luggage" in Class A; "commercial travelers' luggage" in Class B; ordinary passengers are allowed 150 pounds on a first-class ticket; commercial travelers, Class B, are allowed 300 pounds on a first-class ticket. Commercial travelers are allowed to check through the day's run, or for a return journey to their starting point at the lowest rate for the total distance traveled, if prepaid.

The rates are graded according to the total miles run, and the commercial travelers' rate is half that of the ordinary traveler's rate.

In other words, the traffic is treated entirely in a class by itself, and the sturdy English sense of justice and fair play prompts no complaint.

The essential feature of the English system to be commended above our own is the separate classification. With this established, sample excess baggage ceases to be an illegal exaction upon the transportation companies and takes its place in orderly relation to other traffic, both state and interstate.

The responsibility for loss or damage in transit follows in necessary and proper sequence. Under such a system of classification the railroads are left free to make, if they so desire, a different rate on excess sample baggage, and the aim of the old excess baggage book is thus attained without its complication of accounts and necessary auditing.

The issuance of these excess sample baggage books giving discounts of 20, 25, and 33½ per cent to the traveling public, was an admission of a margin of profit hitherto unknown and supposed to be impossible in the domain of excess baggage. This margin of profit was in no way denied even by implication in the withdrawal of the books. Want of patronage was the only reason alleged, and that was caused by the fact that the books were not interchangeable and each one must be supplemented by many additional similar books on different lines.

Another consideration favoring separate classification is found in the very just claim made by a railroad official in the Central Passenger Association hereinbefore mentioned, to the effect that any concession favoring the commercial traveler on excess sample baggage, must necessarily under present regulations, be extended to the ordinary passenger baggage and an uncalled-for loss of revenues would ensue.

Accurate statistics as to the relative proportion of ordinary passengers' excess baggage and commercial travelers' excess baggage are impossible to obtain, but careful inquiry among railroad men competent to speak from experience upon the subject, places the relative percentages at 60 per cent and 40 per cent. It would take 700,000 traveling men traveling 15,000 miles a year to make 40 per cent of the total passenger movement of 1906, which was 25,842,462,029 passengers carried 1 mile.

This classification of excess sample baggage to be effective must be uniform over all States and that can not be obtained by individual state laws. Two States side by side, having identical 2-cent fare laws, are not secured from 3-cent mileage charges on interstate business. Uniformity can be obtained by conference and agreement with the railroad companies and they seem, so far as uniform rate is concerned, to be ready to concede the point. At the Buffalo rate meeting of May 22 last, it was publicly announced that there was to be a uniform 16½ per cent of first-class fare rate to be placed on excess baggage all over the United States, Canada, and Mexico. The Pennsylvania road, it is said, has already issued their printed schedule on this basis. The per cent amounts to one-sixth of the first-class fare. It is not stated whether the old limitations of minimum rate and minimum total charge are to be continued, but if they are, immediate protest should be made.

Another possible method of obtaining uniformity of rate would be by a tentative ruling of the Interstate Commerce Commission, based upon representations as to the injustice, unreasonableness, and restrictive tendency of the present widely conflicting schedules in different parts of the country for the same service in transporting excess sample baggage.

The Interstate Commerce Commission, in a letter to the national wholesale dry goods committee on excess baggage, said: "The commission will not have power by general order to reduce rates on excess baggage for all carriers throughout the United States. It has jurisdiction of complaints of unreasonable rates charged by particular carriers."

The old schedules on excess baggage were popularly supposed to be based upon a percentage of 12½ per cent—½ of the first-class 3-cent fare, but one before me, issued by the Wabash road, figures 12½ per cent only in detached places. Among the shorter runs the ½—12½ per cent rate—is not reached until a fare of \$2—67 miles on a 3-cent basis—is paid. Evidently there was no intention to share the benefits of the ½ per cent with the grand average of the patrons on Central Passenger Association territory, who

averaged only 39.69 miles per passenger run in 1906, and from that down to 29.59 miles per passenger run in 1895.

A Boston and Maine schedule figures 20 to 25 per cent up to 70 miles on a 3-cent basis, and $\frac{1}{2}$ — $12\frac{1}{2}$ per cent—on the longer mileages, an evident cold shoulder to the grand average of individual travel in New England territory which was 17.45 miles per passenger run in 1906.

These discriminations, for they are surely such, are corrected in some of the later schedules. Tariff 16, St. Louis and San Francisco Railroad, commences its percentage division squarely at 1-cent fare paid, but specifies that the schedule shall be used between points both lying in the State of Missouri. A Boston and Albany excess sample baggage schedule marked in effect after July 1, 1908, charges its passengers who ride 19 miles at 2 cents, 38 cents fare paid, an excess rate of 15 cents per 100, or 39 per cent, while passengers who ride 210 miles at 2 cents, \$4.20, pay 70 cents, or $16\frac{2}{3}$ per cent of the first-class fare. As the average run of miles per passenger on this territory is 17.45 miles, the moral is again evident.

In other words the grand average of travel which is shown by the average distance traveled per passenger—

In the New England States 17.45 miles.

In the Middle States 23.30 miles.

In the Central Northern States 39.69 miles.

does not participate in the basic percentages of $12\frac{1}{2}$ per cent of the 3-cent fare and 18 per cent of the 2-cent fare supposed to rule in the make-up of the excess baggage tariffs, for the reason that the percentage does not commence to work until after these average mileages have been run, the action of the percentage having been forestalled by average minimum rate and total charge requirements.

A minimum total charge requirement for handling a given amount of baggage is perfectly fair, very clear, and easily adjusted. A minimum average rate requirement is a complication of accounts and an addition to expense which can easily be provided for under the minimum total charge head.

The makers of the $16\frac{2}{3}$ per cent rate at Buffalo seem to have proceeded upon the assumption that 2-cent fare will eventually be established as the universal rate. At present only six or seven States have passed such laws. If, for any reason, the present proportion should remain constant, the $16\frac{2}{3}$ per cent rate will mean a large average advance over the country.

$16\frac{2}{3}$ per cent—new rate—of 50 miles at 3 cents—\$1.50 is 25 cents, or 6.25 cents more than

$12\frac{1}{2}$ per cent—old rate of 50 miles at 3 cents—18 $\frac{1}{2}$ cents.

showing an advance of 33 per cent for the new rate on all territories where 3-cent fare holds out, and the new baggage rate is put in.

Again

$16\frac{2}{3}$ per cent—new rate of 50 miles at 2 cents—\$1, is 16.67 cents

2.08 cents less than

$12\frac{1}{2}$ per cent—old rate of 50 miles at 3 cents—\$1.50, 18.75 cents,

showing a reduction of 11.09 per cent on the territories where 2-cent fare has been established and the new baggage rate has been put in.

There is no reason for an advance in excess rates at this time except that the transportation companies should be allowed to recoup themselves for reductions in passenger revenue by subsequent additions to the rate on excess baggage. If the 2-cent passenger laws are sound in law and justice, this should not be permitted.

The economic conditions of 1908 are extraordinary, extraneous, temporary, and have come to all alike. It is illogical and selfish for any one interest to endeavor to shift its burdens to the shoulders of another. The times are ripe for a settlement of the existing tangle of differences on this excess baggage question, but it needs united action on the part of all interested in the traffic. The National Wholesale Dry Goods Association has appointed a committee of five members, Mr. Robert Geddes, of Indianapolis, chairman, who, under the sanction of the association, are proceeding along the lines of forming desirable alliances with all interested in the traffic, so that concentrated effort upon some mutually satisfactory plan can be followed.

As far as the committee has learned other associated lines of trade have postponed the consideration of this matter in order to cooperate with the action decided upon by the united committee and thus give the combined representation a stronger emphasis.

The movement needs the dash, the enthusiasm, the practical legislative knowledge, the determination to win, the general all-around ability of the members of the Travelers' Protective Association. The exact course of action to be followed will be a matter of mutual conference. The objects to be attained are—

Uniformity and reasonableness of rate.

Interchangeable quality to be assured by complete uniformity.

Proper classification of excess sample baggage.

Correct legal status of the traffic.

These objects, when attained, will be worth hundreds of thousands of dollars to the commercial traveling interests of the different sections of the country.

We must be fair, we must be intelligent, we must be logical, we must be conciliatory in our demands; otherwise, our results will not appeal to intelligent men. We should aim to settle the excess sample problem on broad lines now and once for all, and not allow ourselves to be turned aside by any temporary, or purely local, concession. There should be no begging demands, no pleas that certain things should be done because the railroads "have to run their trains anyway." The railroads are trustees of a value belonging to the whole body of stockholders and patrons, and the best interests of all are subserved by a policy which makes every turn of a wheel bear its legitimate expense, collected without rebate or discrimination from the interest to which it should be justly charged. The lowest average of expense to all comes from a cheerful assumption by each one of his own individual share. State action is only partially effective. The present status of excess sample baggage before the law and from the standpoint of the railroad company is thoroughly unsatisfactory to the merchant of the country. It is too important an interest to be left as a matter of chance favor or disfavor, local justice or injustice.

Its true basis should be determined, its service graded and its treatment confided to a stable, uniform policy all over the United States.

The cap has been made to fit down nicely on the great majority of the traffic.

This matter of the misapplication of rates is only referred to in order to show that there are other conditions attached to the traffic which go to make heavier the burdens upon the commercial traveling public which should enlist your aid in their behalf.

There is but one conclusive way to treat this subject, and that is for Congress to establish the general principle by the passage of House bill 1491, and leave the detailed adjustment of rates and other conditions to the cooperative consideration of the merchants, manufacturers, commercial men, and the railroads. We therefore petition you that House bill 1491 be placed upon its passage and be advanced to a vote at the earliest possible moment, and thus pave the way to other needed adjustments in this valuable and constantly increasing traffic.

STATEMENT OF MR. MARTIN CONBOY, OF THE FIRM OF GRIGGS, BALDWIN & BALDWIN, NEW YORK, ATTORNEYS FOR THE NATIONAL WHOLESALE DRY GOODS ASSOCIATION.

The CHAIRMAN. Please give your name and state what you represent.

Mr. CONBOY. My name is Martin Conboy. I am a member of the law firm of Griggs, Baldwin & Baldwin, of New York City, attorneys for the National Wholesale Dry Goods Association.

Mr. Chairman and gentlemen, I am not going to take up very much of the time of the committee, and what I am going to say, gentlemen, is to be devoted entirely to the statement of the character of this legislation that we are seeking to have the Congress of the United States enact into a law and the necessity for it. All that we are asking by this House bill 1491 is this, that Congress shall determine, in connection with the carriage of commercial travelers' samples by railroads engaged in interstate commerce, while they are so engaged, that such samples and catalogues and the other articles that the commercial traveler takes around with him when he is making sales shall be classed as baggage.

Now, although in Mr. Sigler's experience he has never come across a case where the courts have determined that travelers' samples are not baggage, yet the courts in this country, following the precedent of England, have limited the definition of baggage to personal effects of a traveler, and in many instances where traveling salesmen's samples have been lost the railroads have defended against a recovery on the theory that they were not baggage and should have been shipped as freight. In our own State of New York in one instance where a trunk of sample shoes was lost on the line of the New York Central Railroad and the New York Central Railroad had issued what was called an "excess baggage check," the New York Central Railroad defended against an action for recovery for the loss of that trunk of shoes on the ground that it was not baggage and should have been shipped as freight, and that even if it was regarded as baggage, the employer of the traveling salesman, not a party to the suit, was the owner of the baggage, and therefore the person who tendered the trunk had no right to recover. That was the contention of the railroad company in that action.

MR. RICHARDSON. Your contention is to have all this included under one term of "baggage?"

MR. CONBOY. Yes, sir; "personal and sample baggage." Now, where do we get that term of "sample baggage," gentlemen? In this very case that I have referred to, that went to the court of appeals in the State of New York, the New York Central Railroad had adopted a regulation which contained this provision:

All cases or trunks containing merchandise will be carried as an accommodation to commercial travelers when release of liability is signed in consideration of its transportation on passenger trains as baggage.

You had to sign a release on that baggage. In case personal baggage and samples are sent in the same trunk, a release must be signed covering the samples.

Now, you see, the railroad companies there make a classification between what they call "personal baggage" and what they call "sample baggage," and we are asking Congress to make that classification legal. If the classification can be made as a matter of regulation by the railroad company itself, we say that the classification is not a matter of discrimination, and that this Congress can exercise, in passing a law upon that subject, the right of saying, "Why should the railroad find it more difficult to carry 150 pounds of sample baggage along with a commercial traveler than it does 150 pounds of personal effects along with a tourist?"

MR. STAFFORD. How general is the practice on the part of the railroads to compel commercial travelers to sign a release?

MR. CONBOY. I could not tell you. But in that case before the court of appeals that regulation is spread out with authority.

MR. BARTLETT. Did the man fail to recover for the damage?

MR. CONBOY. Oh, no; the court held that he had a right to recover under this independent contract which the railroad company signed and for which they charged a consideration.

MR. BARTLETT. If you have got no case where the courts, either state or federal, have failed to permit the traveling salesman to recover for a loss or damage even under that sort of contract, what is troubling you?

Mr. CONBOY. The trouble is this: Unless there is a contract of some character which the railroad company has set down in writing, personal effects are the only kind of baggage recognized by the law, and the railroad company at any time may——

Mr. KENNEDY. Are you right about that?

Mr. CONBOY. I am right, so far as the definition is concerned.

Mr. KENNEDY. Whose definition?

Mr. CONBOY. The definition of any court that decided the point.

Mr. KENNEDY. Is there any case where the carrier has refused to carry anything where they have supported that position, except in the case of dogs and cats and things of that kind that they can not be compelled to carry?

Mr. CONBOY. I do not think you can mandamus a railroad in a case like that.

Mr. RICHARDSON. Would not the answer of the railroad be in a case of mandamus like that, "These people should send that by freight; they are trying to get me to send it in a different way?"

Mr. CONBOY. I will answer your question. The books are full of cases where the railroads have defended against the shipment of travelers' samples on the ground that they were not baggage, and that they were shipped as baggage by artifice. Here is the railroad ticket which I came down here from New York on which says, "The company's liability for baggage checked hereon is limited to wearing apparel not exceeding \$100 in value, except by special contract."

Mr. KENNEDY. Your State has distinctly held in every decision made by the supreme court that that limitation on that paper is of no use.

Mr. CONBOY. No, sir. I have not made myself clear on that point. In this particular case that I am speaking of, the baggage master who received this trunk had issued a special independent agreement for the reception of it. It was not carried as baggage along with the passenger, but as excess, for which a special independent contract had been made.

Mr. KENNEDY. The carrier can not on its ticket limit the kind of baggage it will carry. Your courts have held on that.

Mr. CONBOY. No, sir. Our courts have held that the only kind of baggage that can be carried is personal effects, and if you should try to carry anything else you are practicing a deception on the railroad company, and when the baggage is lost you can not recover.

Mr. BARTLETT. Have they held as to the limit or amount?

Mr. CONBOY. Yes. A special contract either for the transportation of a passenger or of freight is lawful, and the difficulty we have before us at the present time is that when you come to ship a traveler's trunk, unless you ship it by freight there is no certainty that the railroad company will give you anything if it is lost.

The CHAIRMAN. What is it that you want to get?

Mr. CONBOY. We want to get a legalization of travelers' sample baggage and require railroad companies while engaged in interstate commerce to carry 150 pounds of travelers' samples along with the traveler, just as they carry 150 pounds of personal effects along with the tourist as his baggage, and that where there is an excess in the amount of baggage the car shall be required to carry the excess when they have a baggage car, as they would be compelled to carry the excess when it is personal effects. We do not want anything more than that.

Mr. RICHARDSON. Is not that in effect trying to force a carrier to take a box of shoes or merchandise that ought to go as freight and put it on the level with a man's personal baggage?

Mr. CONBOY. It is an attempt to compel the common carrier to carry the samples, no matter whether they are shoes or any other kind of merchandise, that the traveling salesman is carrying with him along to his destination.

Mr. RICHARDSON. What is the difference in the charge made by the railroad if it were required to carry that commercial baggage in the same way as the personal baggage? What would be the difference in the charge by the railroad if that commercial baggage went by freight?

Mr. CONBOY. We have attempted to cover that point by saying this in the law:

That in case of loss or damage to such samples, goods, wares, appliances, or catalogues of any commercial traveler or his employer, the carrier shall not be liable for any greater proportion of the value thereof or the damages sustained thereto than the excess baggage fare paid by the passenger bears to the current rate of freight on such line for like articles in like packages between the same points, but in no case shall the carrier be liable for more than the value of such samples, goods, wares, appliances, or catalogues.

Mr. RICHARDSON. What are you reading from?

Mr. CONBOY. From section 4.

Mr. ADAMSON. The excess baggage rates charged on that package were really higher than if it were shipped as freight?

Mr. CONBOY. Yes, sir. I do not know that the passing of this law would cause the railroads to cut down their rates at all.

Mr. ADAMSON. You are willing to pay the difference if this law is passed?

Mr. CONBOY. Yes. We are willing as soon as this law is enacted to pay the difference. Then commercial travelers' samples will have attained a legal status, and they will not be contraband of commerce when carried as baggage and not as freight; and, having so attained a legal status, we will be in a position to demand that they be carried properly and for a proper rate.

Mr. ADAMSON. What I want to understand is that the railroads could not complain that they were carrying that at a freight rate when they really charge a higher rate?

Mr. CONBOY. Yes; they are entitled to charge for the excess just as though it were personal effects. We are not asking for a discrimination between the rates on personal effects and commercial travelers' samples. All we ask the committee to do is to determine that this is legal baggage.

Mr. ADAMSON. When you reach your destination you want to have your samples with you?

Mr. CONBOY. Yes; certainly. Otherwise a traveling salesman can not travel. If he has to get his baggage by freight, and wait a long time at a place before the freight comes before he can canvass that town, he can not do any business.

Mr. RICHARDSON. And if it fails altogether to get there, you want to be allowed to claim damages, just as in the case of personal baggage?

Mr. CONBOY. Yes, sir. Those are all incidents of the same thing.

The CHAIRMAN. What is the trouble now? Why do you want it legalized?

Mr. CONBOY. It is not legalized now.

The CHAIRMAN. What is the trouble now? Has any railroad refused to carry it?

Mr. CONBOY. They do not refuse to carry it, but——

The CHAIRMAN. Very well, then; what is the trouble you want to get at?

Mr. CONBOY. We want to have the railroad companies compelled to carry it. They are not compelled to do so at the present time.

The CHAIRMAN. Are there any instances where they have refused to carry it?

Mr. CONBOY. I have instances where they have refused to pay for it when it has been lost.

The CHAIRMAN. What is the trouble you want to overcome?

Mr. CONBOY. They can stop carrying it at any time.

The CHAIRMAN. But they have not stopped. What is the trouble you want to overcome?

Mr. CONBOY. We want the status of it determined in a legal fashion, so that we can recover for it when it is lost; so that we can obviate unjust discriminations in connection with the carriage of it, and so that the railroad companies will be obliged to carry it, and for a proper rate.

The CHAIRMAN. What unjust discriminations have there been?

Mr. CONBOY. Instances of unjust discriminations have been cited by Mr. Sigler and other gentlemen in the carriage of it by different roads.

The CHAIRMAN. Do you know of any unjust discriminations?

Mr. CONBOY. I am merely an attorney at law. I am not an expert on the carriage of baggage.

The CHAIRMAN. Have you any instances?

Mr. CONBOY. I will ask Mr. Sigler for them. I can not give them to you offhand.

The CHAIRMAN. Cite a specific case.

Mr. RICHARDSON. Will you allow me to undertake to understand what you want? As I understand, the rule now of the common carrier is that a man is allowed 150 pounds of personal baggage. That goes along with his ticket?

Mr. CONBOY. Yes, sir.

Mr. RICHARDSON. If you go there and put in 150 pounds, also, of commercial baggage, the commercial drummer's baggage, consisting of shoes or any other articles, while you are not complaining of the rate at all that the railroads are making, and while you are not complaining that the railroads have rules made to carry that commercial baggage, you are complaining that in the event that 150 pounds of commercial baggage is lost, the railroads come up with the defense and say, "Yes, it is lost, but you ought to have shipped it as freight, when you shipped it as baggage."

Mr. CONBOY. That is one of the particular causes of complaint.

Mr. RICHARDSON. Is not that the leading one? You have no complaint about the discrimination of the railroads, have you?

Mr. CONBOY. No.

Mr. RICHARDSON. You have no complaint to make about high rates or unreasonable rates, but you are only trying to put that commercial baggage in a legal attitude, so far as the railroad is concerned?

Mr. CONBOY. Precisely. That is what I was endeavoring to say to the chairman. What I was seeking to do is, as you have so well phrased it, to put this commercial travelers' sample baggage in a legal attitude before the law. Now, after the sample-baggage right is attained, the right to demand damages for its loss or injury will be a right also, and then we also can go to the Interstate Commerce Commission and complain of an unjust or discriminating tariff affecting that baggage. As it is now, they say, "You have no right to demand that that baggage shall be sent as baggage." They say, "You should ship it as freight."

Mr. KENNEDY. Has not the common law clearly been changed by a universal custom ever since the first railroad started to run in this country, allowing you to carry the samples of traveling salesmen? Have not the railroads known continuously ever since the first railroad ran that the samples of traveling salesmen were not personal wearing apparel? Has not that system been universal, constant, and well understood?

Mr. CONBOY. Unquestionably so.

Mr. KENNEDY. Then, why have you not gone with your lawyer into the courts and insisted upon your right to have it recognized in a legal status?

Mr. CONBOY. Well, sir, the lawyers have gone into the courts.

Mr. KENNEDY. Then you must have sent the wrong lawyer.

Mr. CONBOY. A good many lawyers have gone into a good many courts, and they have always received the same answer every time.

The CHAIRMAN. You complain that the Interstate Commerce Commission now has no authority to fix the rates. Have you tried that method?

Mr. CONBOY. No, sir. We have not tried that method.

The CHAIRMAN. Why do you predict what the decision of the Interstate Commerce Commission would be, without an effort to obtain a decision?

Mr. CONBOY. Well, we have looked at it in this fashion: The Interstate Commerce Commission is bound to follow the law, and the law has made it plain that the travelers' samples are not baggage. We do not want them carried as freight, and we can not get the Interstate Commerce Commission to indicate that the distinctions which have heretofore been enforced by the courts shall not longer obtain and that these travelers' samples shall be considered as so much baggage hereafter.

The CHAIRMAN. You are assuming a certain condition of the law. The Interstate Commerce Commission has authority to regulate rates and the practices of the railroad companies as affecting rates?

Mr. CONBOY. Yes, sir.

The CHAIRMAN. Why have they not got the authority to regulate the rates of baggage in connection with passenger traffic?

Mr. CONBOY. This is not baggage under the present condition of the law.

The CHAIRMAN. That is a question, whether it is baggage or not.

Mr. CONBOY. I can submit a memorandum of authorities on that proposition.

The CHAIRMAN. You can submit a memorandum of authorities that the railroad companies make a regulation that they will carry

personal baggage, and not sample baggage, and be held responsible; but you can not say that the Interstate Commerce Commission has said that the interstate railroad companies shall not carry any kind of baggage that the commission says they ought to carry. You have not thought about that remedy?

Mr. CONBOY. We have not thought of asking them to disregard the decisions of the courts of law as to what is baggage. The only baggage known to the law is personal baggage, wearing apparel.

Mr. RICHARDSON. Then if the Interstate Commerce Commission can go in the face of all the decisions defining what baggage is, they can order a whole freight car to be hauled for the reception of baggage.

Mr. CONBOY. Then they have more power than I or anybody else thought they had.

Mr. ADAMSON. When the railroad company takes sample baggage, does it not know what it is?

Mr. CONBOY. Yes.

Mr. ADAMSON. There is no concealment in this?

Mr. CONBOY. No.

Mr. ADAMSON. Does not the drummers' baggage make up a large per cent of the baggage in the cars?

Mr. CONBOY. Yes. I have no doubt they cover up the greater part of the floor of the baggage car with their trunks.

Mr. KENNEDY. Do you know of a case where a railroad insisted on a special contract where you insist on taking sample trunks as baggage, and went into court and issued a mandamus and the mandamus failed?

Mr. CONBOY. No. The courts have refused relief.

Mr. KENNEDY. The whole complaint is this, that the railroads have made an assumption that they had the right to refuse that baggage, and you generally accept their statements as correct?

Mr. CONBOY. No, sir. We had to accept the decisions of the courts of law on the point; not merely the railroad company, but the railroad company fortified by the decision of the courts.

Mr. ADAMSON. The agents who receive and check those sample trunks never refuse to take them?

Mr. CONBOY. No, sir; but when the baggage is lost they say that they ought to have been shipped as freight, and not as baggage.

Mr. ADAMSON. I agree with Judge Kennedy. I do not think you have gone about it properly.

Mr. CONBOY. That is the law in England.

Mr. ADAMSON. The law as announced by the courts depends on facts in a particular case.

Mr. CONBOY. I am not thinking of any particular statement of facts with reference to the application of that distinction. It is the distinction that we complain of, and which we ask the committee to change, as the legislatures of Indiana and Missouri have done at the present time. Our bill is modeled on that passed by the legislature of Indiana, with some modification. We do not ask the committee to determine what rate shall be imposed for excess baggage. In Missouri they have drafted their law on the bill we framed in the last Congress, which did not receive attention by Congress.

Mr. ADAMSON. In what respect is the carrier damaged as a general thing with respect to the valuation? For instance, if you take 500

pounds of baggage, they will charge you for 350 pounds excess. Now, I want to know whether a commercial traveler's samples would be more valuable in a hunk of 500 pounds than a number of trunks aggregating the same weight full of low-neck dresses and laces and silks and fancy garments of that sort?

Mr. CONBOY. No, sir. Their tickets under which you ship your baggage and their tickets under which you ship excess baggage limit their liability, no matter what the value of the articles may be.

Mr. ADAMSON. Five hundred pounds of shoes would not be worth as much as 500 pounds of wearing apparel?

Mr. CONBOY. No, sir. In a case of shoes they might probably be all right-footed or all left-footed shoes. There would not be a complete pair of shoes in the entire trunk.

The CHAIRMAN. They are not any the less valuable on that account, however.

Mr. CONBOY. No; they would not be the less valuable on that account.

Mr. KENNEDY. I have read over section 4, and I can not understand what it means.

Mr. CONBOY. Well, sir, that is probably the fault of the men who drew it. That section means this: When a railroad company takes your excess baggage and charges you for it on a certain rate, and that baggage is lost, the railroad company shall only be responsible for such proportion of the value of the contents of that trunk as the excess baggage rate bears to the freight rate upon the same article, so that by compelling the railroad company to carry this as excess baggage, they are bearing a less rate for excess baggage.

Mr. KENNEDY. Then you would make proof of the real value of the thing lost and discount it?

Mr. CONBOY. Yes; discount it by the proportion that the excess rate bore to the baggage rate. You could not recover more than the value of the goods.

Mr. KENNEDY. Why is that fair?

Mr. CONBOY. It seemed to us to be fair, and we put it in as a matter of fairness to the railroads.

Mr. KENNEDY. It looks to me as though you were too generous to the railroads.

Mr. CONBOY. We want to give them something. [Laughter.]

Mr. KENNEDY. The railroads have been carrying your baggage right along always, and it is one of the customs of the business, and that custom is as much a part of your contract when you deliver your goods to be carried by the railroads as anything that is said or written.

Mr. CONBOY. You can never found a custom on a matter of deception.

Mr. KENNEDY. There is no deception in it. The railroads have always understood that your sample trunks are not clothing or personal effects. They are as much baggage, in my judgment, notwithstanding the holdings of the courts, as personal apparel.

Mr. CONBOY. Now our grievance is really against the legal definition, and that is the grievance we are asking to have remedied by legislation. We are asking nothing more than that.

The CHAIRMAN. But there is nothing in the bill that changes the definition.

Mr. CONBOY. Yes, sir. It says, "That the samples, goods, wares, appliances, and catalogues of commercial travelers" shall be considered as traveler's baggage. We say:

The samples, goods, wares, appliances, and catalogues of commercial travelers or their employers and used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling, are hereby declared to be sample baggage within the meaning of this act.

The CHAIRMAN. Very well. That is all.

Mr. KENNEDY. Why should not those samples be regarded as excess baggage?

Mr. CONBOY. If they are in excess of 150 pounds they are excess.

Mr. KENNEDY. If they are all samples, and not clothing or apparel or personal effects, why not charge for all of them?

Mr. CONBOY. That would be discriminating against the traveling salesman, who ought to have 150 pounds carried through the same as the ordinary tourist.

Mr. KENNEDY. I guess you are right about that.

The CHAIRMAN. Judge Pickett has some gentlemen here who would like to be heard in connection with the electric or interurban service as affected by the interstate-commerce bill pending. We have some hearings going on now. I suppose we will take a recess now until this afternoon. I do not know whether we will get through with this this afternoon or not, but we will go ahead to-morrow and Wednesday. I think we can hear you to-morrow or Wednesday. We may have to run them in between others. We already have people here who are designated to be heard on those days, but I think we will be able to hear your people some time during these days. They had better be here at 10 o'clock in the morning. Then we can see.

Mr. SIGLER. Do I understand, Mr. Chairman, that you are through with the excess-baggage proposition?

The CHAIRMAN. No, sir. I can not say positively that we are through yet.

Mr. CONBOY. We have finished our side, Mr. Chairman.

The CHAIRMAN. Very well. Then we will take a recess and hear the other side at 2 o'clock.

(Thereupon, at 11.45 o'clock a. m., a recess was taken until 2 o'clock p. m.)

AFTERNOON SESSION.

The committee reconvened at 2 o'clock p. m., Hon. James R. Mann (chairman) presiding.

STATEMENT OF MR. HENRY P. DERING, GENERAL BAGGAGE AGENT MICHIGAN CENTRAL RAILWAY; HEADQUARTERS, CHICAGO, ILL.

Mr. DERING. Mr. Chairman and gentlemen, I have been connected with the Michigan Central for thirty-six years, and as general baggage agent for twenty-eight years.

If you please, gentlemen, I would like to make a statement touching this matter in full, and then would be very glad to undertake to answer any question which I have overlooked. I am laboring

under just a little embarrassment in speaking to you, because of the change apparently in the programme touching the bills. The bill that is before us is in fact a rehash of what is known among railroads as the Indiana bill. It came up here in the second form, practically the same as it was passed in Indiana, except with a lower minimum charge. As I understand, the proposition here is to obtain the sanction of the Congress touching a certain phase of this matter, and to enable them to emphasize, in the other States where they propose to introduce this bill, and make it effective; and in consideration of a proposition to change in any particular the rates or the conditions governing certain traffic it is proper, we believe, to ascertain who is interested in the proposed change, in what manner those interested are affected, and who the especial beneficiaries are, and if a concession is made to certain interests if it will give those interests an undue advantage over their competitors in the same line of business. A careful consideration of the proposed enactment persuades us that there are four strong interests involved, and that the interests of one particular class are diametrically opposed to those of all the others. We will consider them in the following order:

First. The transportation lines and the question of a fair revenue for services rendered. Second. The larger wholesale houses, or those carrying the heavier or larger lines of samples, and who possibly represent 5 per cent of those interested or of those paying excess charges. Third. The smaller or less influential wholesale houses, carrying smaller lines of goods, and who presumably represent 75 per cent of those paying excess-baggage charges. Fourth. All other citizens who have occasion to patronize railways, a small portion of whom, however, only occasionally pay excess charges on personal baggage.

We will consider first the position of the transportation lines; and that we may better understand all points at issue I would state that in the earlier history of transportation the wants of the people were but few and the average wearing apparel carried by a passenger was insignificant, and when it seemed necessary to place some limitation upon it, it was first agreed that 50 pounds would be carried free, a little later 80 pounds, and after years 100 pounds, and finally, by almost universal custom, 150 pounds were allowed free for each passenger, and in making excessive rates over the free allowance the question of revenue was not seriously considered. The passenger fares ranged from 3 to 4 cents per mile, and as there was supposed to be a fair profit in the handling of the passengers while the excess rates were based upon substantially the 20 per cent of the 3 and 4 cent fares, the actual amount collected was insignificant.

We use the words "substantially 20 per cent of the passenger fares" for the reason that in the earlier days excess rates were made in fact on the mileage basis, but in time as competition came up it was necessary to meet the short line, and we went to the basis of passenger fares. Those fares ranged originally from 16½ per cent, substantially, of 3 cent fares, and in the early eighties they were reduced to 15 per cent, and upon the passage of the interstate-commerce act we voluntarily reduced them to 12 per cent of 3-cent fares. I would explain that in making these rates we maintain a minimum of 15 cents per hundred, and then make the gradual increases of 5-cent raises in the

rates, using 12 per cent of the passenger fares only at the change of the 5-cent increase, the same as is now generally practiced under the present system. Under all of these previous tariffs the minimum rate of 15 cents had been maintained and the minimum charge of 25 cents, because we believed that those charges were fair and reasonable, having in view the terminal expenses of loading, handling, and recording the movements of such property, and the value of the service rendered in connection; and you will understand that this is all that is particularly involved in this controversy.

These tariffs are arranged to apply to fares of 3 cents per mile, which were in effect at that time; but upon the passage of bills by the legislatures of Ohio, Illinois, and other States, reducing passenger fares to 2 cents per mile, the excess rates were readjusted about December 1, 1907, with the idea of giving us substantially the same rate per 100 pounds under the 2-cent fares as had been in effect under the 3-cent fares, and we maintain that those rates are reasonable.

As applied to traffic, I would say that we never have discriminated against the commercial interests. We have always accepted their property for transportation. We have carried it at the same rates. In the earlier days it was a small institution. A few travelers came out from New York. It was not much of an institution, and we accepted it; but they gradually grew and took in the entire territory in time. Our tariffs are filed with the Interstate Commerce Commission, and we recognize a reasonable responsibility, of \$100, with the privilege of stipulating for a greater amount. We never have discriminated against them, and we never had any fight with them; but we never considered them in any sense benefactors of the railroad. This morning a young gentleman spoke about their going out and getting orders and the freight following. We consider that contention absurd. These gentlemen out selling goods, both the large and small shippers, are simply competing with each other in the distribution of a product for profit. What one gets, another loses. They absolutely create no business.

The CHAIRMAN. They are engaged in a very foolish undertaking then, I suppose?

Mr. DERING. No, sir.

The CHAIRMAN. How much do you suppose that it costs them a year to do that useless work?

Mr. DERING. Each one does it to get the business for himself.

The CHAIRMAN. They make money by spending money, or they would not be doing any good.

Mr. DERING. You misunderstood me, Mr. Chairman. I said they did not do us any good.

The CHAIRMAN. They do not do themselves any good unless they sell more goods by it.

Mr. DERING. Yes.

The CHAIRMAN. And if they do sell more goods by it, then they do create business.

Mr. DERING. You and I, Mr. Chairman, only wear so many suits of clothes a year, and we decide how many suits we shall wear. It does not make any difference what they do. When I was a young man A. T. Stuart & Co. were the greatest wholesale firm in the market, and when that house ceased to do business I think you can not find

a man in the United States that will say that the railroads ever lost a ton of freight or a pound of freight in consequence. We have had here certain interests representing that they wanted lower rates in Michigan, and that in consequence of the low rate in Indiana they had largely increased their sales. It was pointed out that this was a competitive business. If you increase your sales, presumably some small dealers' sales decrease. He said we were not looking after the small dealer.

As a matter of fact, Mr. Chairman, if these men go out and create business, they assume a great responsibility, and I do not see why, when we have hard times, they can not create some business to keep our roads busy; but, as a matter of fact, they are governed by the law of supply and demand. We have no power over that. Their business is perfectly legitimate, and they have their goods to sell and their profits to take, just as we have transportation to sell, and we claim we are entitled to receive a fair compensation for it. I will not bore you long on this, but we claim that we are opposed to this bill on this ground. Using the line I am connected with as an illustration, we have rules governing the transportation of samples, and we reserve to the Michigan Central the right to run its property in the interests of the great citizenship of the United States. There are millions of people interested in our railroads and transportation. One gentleman here said about 40 per cent of the travel on his road was by commercial travelers. I do not know where he gets his figures. I should say possibly 15 or 18 per cent of the travel on our lines may be represented by commercial travelers, and 5 per cent of them are particularly interested in carrying heavy samples. There are a great many commercial travelers carrying hand samples, and many of them pay no excess baggage. There are a few great firms whose salesmen carry large amounts of extra baggage.

In operating trains on a fast schedule we have hundreds of thousands of people to serve. We undertake in those schedules to give the greatest possible service to the greatest number, and we reserve the right with our fast through trains, if a man comes down there with, as our friend here said, a ton of samples, and that train is struggling with 300 passengers to make a through connection, and in case they miss that connection they would be put to great inconvenience, in that case to say we will not send that baggage on that express train, but on the local two hours later.

When we come into the great State of Indiana we can not do that. We had an illustration some time ago of that. Our through train No. 23 from New York to Boston, contending with the elements in the State of New York, was so far behind her schedule that the least further delay would make it impossible to make that connection, and we were doing all that we could, hoping to make it possible to save that connection, for the sake of our reputation—and you do not know how much money we all spend for our reputations; they ran a special train ahead from Buffalo to Chicago which cost over \$250 to see if they could not make it possible to save the connection for our patrons who had paid us their good money and who did not care anything about those goods—and we came to Michigan City in the State of Indiana, and there was a man showed up with more than 2,500 pounds of baggage, and he compelled us, under the law of the State of Indiana, to take that baggage and transport it to Hammond,

and we lost that connection. Outside of Indiana we undertake to run the railroad. We believe that we know better what is in the interest of all the people than that man, and we should be allowed to protect our people as against putting it in the hands of any single individual to jeopardize the interests of a great through train. It is particularly noted that in this bill that is the first point. They want you to pass a law which would make it possible for them to say "You will take that. I care nothing about your through service or your through passengers. I am selling goods." We think it is not in the interest of the public for them to be able to do that. On the public notice posted in our stations we say "We will give you the best service possible, and we reserve the right if it interferes with through connections, to send your baggage on another train." We are opposed to this proposed legislation on that score. We are opposed in a general way to the law in the way in which it is proposed. It is evident, as you will see in reading that, that the Indiana law—and these are all copied from it—was framed by some one representing a large dry goods house, the way those terms read, because we check every conceivable sort of a sample, and many which are not known in a freight rate sheet. For instance, the other day a gentleman complained of the rough handling of a piece of baggage by one of our men. That trunk contained his samples of jewelry, over \$25,000 worth. Would it be fair, when that trunk was going only 10 miles, in which case we would under our law make a charge of only 20 cents, to have to pay that man \$10,000 on an accident on a 20-cent investment? Now, we allow a reasonable limitation. If a man will pay us a reasonable price for increased valuation, we will take it; but there are an inconceivable number of things that are checked as samples which are not rated in rate sheets. What value is put on them?

MR. STAFFORD. Do you take the position that the commercial travelers are not entitled to have their samples, needed in their trade, accompany them the same as ordinary travelers have the privilege to have their personal effects accompany them?

MR. DERING. I will tell you what we do; we give the commercial traveler the same service as we give any other individual—a man with a single trunk; but if a man comes down there, we will say one individual, with a ton or so of samples, and he asks us to take him and sacrifice the through connection, we will not do it.

MR. STAFFORD. Would you have any objection, from your standpoint, if the commercial travelers, so far as their sample baggage was concerned, should have the same privileges as you extend to the traveling public as to their personal baggage?

MR. DERING. I do not know as I quite understand your question.

MR. STAFFORD. I think the question is plain enough. Let the stenographer read it.

(The stenographer repeated the last question.)

MR. DERING. We give that now. I do not know that it should be stated by law that we should do that as a general proposition, because that prevents us from using any discretion in saving the interests of our passengers.

MR. STAFFORD. These commercial travelers are pursuing their vocation.

MR. DERING. Oh, yes; a legitimate business.

Mr. STAFFORD. They need the services of the railroads, just the same as the traveling public needs the services of the railroads and has occasion also to carry its personal effects.

Mr. DERING. Yes; we give them that right.

Mr. STAFFORD. Should not these privileges be recognized by law and not be based merely upon the sufferance of the railroads?

Mr. DERING. Well, if you will make a distinction to say that a man can not carry over a certain amount. This gentleman said his friend had a ton of samples. We have known of a man who had a good deal more than a ton. Now, the question is, Where are you going to draw the line? If you say 150 pounds, we give them that now. Nobody discriminates against the commercial traveler except when it comes to those large shipments where a through train is jeopardized by an immense shipment of freight.

Mr. STAFFORD. Then as to personal baggage you would also reserve the right in those instances to withhold the personal baggage from those through trains and send it on slower trains?

Mr. DERING. We do reserve that right when we can not get it all on. Frequently we can not get it all on.

Mr. STAFFORD. Why should not these commercial travelers have the same privileges extended to them for what is necessary in the transaction of their business as the traveling public has as to their effects?

Mr. DERING. It is just like this. One is a freight proposition. Here is a gentleman carrying freight, and it is on the short haul. We do not think that a man should have the privilege of saying that we should be obliged to haul his freight on a particular train.

Mr. STAFFORD. You might as well say that the suits of underwear and the clothing that I need for a whole session of Congress could be sent by freight rather than by baggage; and yet there is more need for the commercial travelers to have their samples with them than for me to have my personal effects accompany me on the train.

Mr. DERING. The gentleman did not profess to have a grievance on that ground, as they said about that. The point is that they want to have it obligatory on us to carry them on these trains. We say we are willing to carry baggage for them. We do. They do not claim that we discriminate against them. We do not. But they want to get this point in to harmonize so that they can dominate our through special service the same as they do our local service. That is not in the interest of the people. The point I wanted to get at is this: We as business men try to operate these properties in the interest of the greatest number, and serve no special interests at their instance. We try to give the best service possible for the greatest number. We think our experience fits us to a degree to decide on that. Having met these contingencies that I speak of, we simply say, let us deal with these people fairly, as we have done.

The CHAIRMAN. Your motto is the greatest good to the greatest number?

Mr. DERING. To a degree; yes, sir. We can not operate our properties in the interest of the few. The question of course is one they are interested in; it is a question of expense. When you consider the question of the rates—they rather sidestepped that question—the rates are very close to the freight rates. In the State of Indiana they are only

about one-fourth the freight rates. In fact, we are carrying quantities of freight in Indiana on passenger trains, to the detriment of every citizen of the State of Indiana, at less than freight rates on freight trains. That is asking a good deal of us.

The CHAIRMAN. Let me ask you a question in that connection. You now carry passengers in the State of Indiana for 2 cents a mile?

Mr. DERING. Yes, sir.

The CHAIRMAN. And you carry baggage under the Indiana state law much more freely than you do interstate baggage?

Mr. DERING. Yes; a good deal cheaper.

The CHAIRMAN. Do you think it is quite fair to the people, do you think it is on the principle of the greatest good to the greatest number, that you should carry passengers for less money in Indiana and with more baggage than you do for people who go across the state line out of Indiana into another State?

Mr. DERING. No; we should not do it.

The CHAIRMAN. It is contradictory of that motto?

Mr. DERING. It is against our motto, but we are compelled to do it by the state enactment.

The CHAIRMAN. No; you are not compelled to do it by the state enactment. There is no state enactment stating what you should charge on going outside of the State.

Mr. DERING. No; but, Mr. Mann, you will pardon me, the Indiana rate is made so low that it is absolutely unremunerative. Nobody claims that it is remunerative. It is simply made in the interest of a few people, a few big firms. Now, because we are, I might say, robbed in Indiana, should not be any reason why we should turn around and rob our stockholders, who employ us, in another State. In conversation with one of the higher officials of our line, he assured me that they had an assurance that at the next session of the legislature of Indiana the legislature would voluntarily rescind the law of Indiana; but in the meantime, as I said, these measures are being proposed and urged in other States.

The CHAIRMAN. You did not have to pay anything for that assurance, I suppose?

Mr. DERING. What?

Mr. ADAMSON. The chairman understands that you had great faith to rely on that assurance of that one member of the legislature.

Mr. DERING. Well, I have not much; no, sir. The State of Indiana has rates like this: Where the passenger fares are from 1 cent to 6 cents, the excess-baggage rate is 1 cent a hundred; and where we get up from 1 cent to 12 cents, it is 2 cents, from 13 to 18 cents it is 3 cents, and from 19 cents to 24 cents it is 4 cents. Now, under our rates which usually obtain we establish a minimum rate of 15 cents a hundred; and because of the energy required in giving this service at the initial and terminal stations, it costs just as much to take a ton of samples and take it into the baggage room and weigh it and make out the excess receipts and load it on the truck and run it to the train and put it on to run 10 miles and unload it and deliver it, just as much energy is required on the part of the transportation line in giving that service as is required in transporting it 200 miles where the rate would be remunerative.

The CHAIRMAN. And yet you charge only 2 cents a mile for the passenger that makes that short journey, and if he goes 200 miles

you charge him 3 cents a mile, and then say that you are doing what is for the greatest good of the greatest number!

Mr. DERING. You are not talking about the baggage rate?

The CHAIRMAN. No; I am talking about the passenger rate, upon which you predicate the baggage rate.

Mr. DERING. No; the passenger rates in Indiana are 2 cents. I am speaking of the principle of the minimum rate. That is the principle involved here.

Mr. ADAMSON. On excess baggage?

Mr. DERING. Yes; I am speaking of excess baggage. Now, in the State of Indiana we have many movements, as these gentlemen say here, short hauls, where we move excess baggage on express passenger trains at 4 cents a hundred, where the freight to the man, the merchant, when he gets his freight, would be 14 cents. It is a ruinous rate. We are opposed to this first on the ground of the loss of revenue.

Mr. ADAMSON. Why do you do that?

Mr. DERING. Because of the law of the State of Indiana.

Mr. ADAMSON. Is there any compulsion on you to do it?

Mr. DERING. It is the same law which is in effect in Indiana, which is before you here.

Mr. ADAMSON. Does that law prescribe your excess-baggage charge?

Mr. DERING. Yes.

Mr. RICHARDSON. What did the gentleman who preceded you mean, or what did you understand him to mean, when he said or contended that all he wanted was to put the commercial shipment in a legal attitude? Does that mean that when you ship that commercial man's baggage and it is lost, you come up and say to him: "Well, you did not ship it as baggage, and you put it in a trunk, and we will not pay you at all?"

Mr. DERING. He was not talking about me.

Mr. RICHARDSON. He was talking about railroads.

Mr. DERING. He was talking about something away off.

Mr. RICHARDSON. You heard his story, and you heard him say that he wanted to put it in a legal attitude?

Mr. DERING. Yes; I heard it.

Mr. RICHARDSON. For the reason that if he shipped his commercial goods in a trunk, and they were lost, the common carrier would not pay for them for the reason that he had not shipped them as baggage?

Mr. DERING. That does not apply to us in the same way. The gentleman gave an illustration of the laws in the State of New York. They acknowledge \$150 responsibility in the State of New York, on the New York Central. They allow the passenger to carry his samples worth more if he will pay for an increased valuation. It does not have reference to us. We are operating the Michigan Central and the Big Four and the Lake Shore, all of them carrying samples, and acknowledging a reasonable amount of responsibility. We have always been willing to do that. But I put my citizenship above my loyalty to the Michigan Central, and I say that I believe that it is detrimental to the citizenship of the United States for you to go to work and put it in the power of certain great houses to make freight trains out of our passenger trains, and by law to compel us to do that. There is no discrimination there. It was not intended. I presume some railroad men sometimes may have done something wrong, but—

Mr. ADAMSON. I thought you made a good deal higher rate on excess baggage, and I thought that I proved it by that gentleman this morning.

Mr. DERING. No.

Mr. ADAMSON. I do not see why you do not hire a lawyer and go to suing somebody on this Indiana statute.

Mr. DERING. There are men who know more about it than I do. I have tried to get them to do that, but the excuse is given, and I will give it to you. We have met a good deal of legislation in different States and we have met some bills in Congress, all of them supposed to be in the interest of the great mass of the citizenship. Some of them we have opposed. When this bill passed in Indiana, I went before the committee of the house and undertook to show the unfortunate features of that bill. Now, that bill in Indiana was calculated to build up 10 or 12 great firms, and kill commercial travelers as a class, and the chairman of that committee said, "Mr. Dering, if this bill is as abominable as you say, you have redress in the courts." I said, "Well, it is an imposition, I claim, for you to put it up to us to assume the odium of going into court and having your action pronounced unconstitutional. You represent us. We have more employees in Indiana than there are commercial travelers, and the interests of those employees are affected in a diametrically opposite manner." Well, they passed it. I want to say this: I am a man who travels over 55,000 miles a year, and I have been in the transportation business for twenty-five years, and presumably I know as many commercial travelers as any man in this room. I meet hundreds of them. I will confide to you that I have had many a commercial traveler traveling for big houses approach me within the last ten days and say: "Go in." They are hoping we will win. Why? Because they know that that rate, if it goes into effect in other States, is death to the commercial travelers' institution. Why? Because a few great houses would absorb the whole business.

The CHAIRMAN. Has it had that effect in Indiana?

Mr. DERING. It has had that effect, in a degree, with them.

The CHAIRMAN. Do the commercial travelers look upon it that way? They are most interested.

Mr. DERING. I am a very busy man, as all of you here are, and I do not go around asking these men questions.

The CHAIRMAN. You are not so busy but that you are endeavoring to present the best interests of the commercial traveler.

Mr. DERING. The commercial traveler is my friend.

The CHAIRMAN. I wanted to know what they thought about it.

Mr. DERING. The commercial traveler is in a peculiar position, sometimes. I am putting it to you that many commercial travelers are anxious that that rate be eliminated in Indiana, and for the reason that the greatest beneficiary under that rate in the State of Indiana is a great firm located in Chicago. They make more out of it than anybody else.

The CHAIRMAN. What firm is that?

Mr. DERING. I might say Marshall Field & Co., presumably. Marshall Field & Co., I suppose, more than any other. I have no personal prejudice in the matter.

Mr. BARTLETT. They are mighty fine people, I know; they are square dealers.

The CHAIRMAN. Do their men carry very heavy excess baggage?

Mr. DERING. Yes; they carry heavy excess baggage. This point, Mr. Chairman, you will remember in this connection, that if a man can go at a lower proportionate rate into the small towns, at a less proportionate rate than a small dealer, it gives him a very great advantage. That is what this bill is gotten up for; it enables them to visit the smaller towns at a much less proportionate rate than the small dealers. Take a man that has 25 pounds excess; he is traveling for a small house. He goes over here 10 miles and he has got 25 pounds. Now, under the rate in Indiana he would pay, say, 25 cents. But a man who goes over there with a ton would pay only half a dollar. He would pay 25 cents extra for over 25 times the service, and he would have an immense advantage. Your wife and my wife, looking for goods—and you, going for goods yourself—go where there is the best exhibit. That law was passed in Indiana as special legislation. I do not wish to be understood that the members of the legislature passed it with that idea, but that it was sought by partial interests because it was calculated to give them a great advantage over the smaller dealers; and a representative of one of the greatest houses in the United States approached me and stated that the interests of the Michigan Central would be served if I would use my influence in getting that rate into some other States. I declined. I said: "So long as I live and am a factor in making a rate every commercial house in America, whether large or small, shall stand with an equal chance with the Michigan Central." Thank you.

The CHAIRMAN. I would say that we would like to have statements now from the men who are practically familiar with baggage matters.

STATEMENT OF MR. F. J. McWADE, GENERAL BAGGAGE AGENT OF THE PENNSYLVANIA RAILROAD COMPANY.

Mr. McWADE. Mr. Chairman and gentlemen, as I understand the matter, under this bill it is proposed to extend the definition of baggage, which has heretofore obtained ever since railroads were built, as wearing apparel and the toilet effects of a traveler going on a journey, to include samples of merchandise, goods, wares, and so forth, for the purposes of the commercial traveler and the owner of such goods. If this bill as it reads should become a law the practical result would be that a passenger, upon presentation of a ticket from Washington to New York, or from Washington to San Francisco, could bring a dozen wagonloads of goods and wares, or half a carload, and require that to be checked to the destination of the ticket, whatever it might be. That would be tantamount to extending the passenger-train service to cover freight business; because, if the English language means anything, it means that a man can take an unlimited quantity of goods and wares and take them on a passenger ticket and sell those goods and wares at destination. Such a proposition as that would be little less than revolutionary, and that is one of the grounds of our objection to it.

Mr. STAFFORD. How many baggage cars do they generally carry on a limited train?

Mr. McWADE. One; and what we claim is that this bill would compel the railroad company to carry goods, wares, and merchandise on a

railway ticket to destination, and not only carry samples, but the goods themselves for sale.

Mr. ADAMSON. I suppose the custom of carrying baggage originated in the desire of the traveler to have his wardrobe and toilet arrangements with him?

Mr. McWADE. Yes; that originated when the railroads were new, and about all the baggage that a man had used to consist of a carpet-bag or a haircloth trunk.

Mr. ADAMSON. And all he had was a change of clothing and his toilet articles?

Mr. McWADE. Yes; a few small possessions.

Mr. ADAMSON. It never contemplated his carrying along the material of a mercantile business as an appendage?

Mr. McWADE. It certainly never contemplated compelling the railroad company to carry merchandise, intended for sale at destination, on passenger trains.

Mr. BARTLETT. That is the construction you put upon this part of section 1:

Receive and transport with each passenger tendering the same the baggage, including the sample baggage of such passenger, not exceeding one hundred and fifty pounds for an adult and seventy-five pounds for a minor less than twelve years of age, and such baggage shall be carried without compensation other than the passenger transportation charge. All baggage, including sample baggage as defined by this act, in excess of the weights here specified is hereby declared to be excess baggage.

Mr. McWADE. Does it not say later in the bill "goods, wares," and so forth?

Mr. BARTLETT. Yes; "of commercial travelers or their employers."

Mr. McWADE. Yes.

Mr. BARTLETT. That is in section 2.

Mr. McWADE. Might it not be his purpose to sell those goods at destination?

Mr. BARTLETT. It might.

Mr. McWADE. Then we are compelled under this law to carry them on presentation of a ticket.

Mr. BARTLETT. It looks like you are.

Mr. McWADE. Yes.

Mr. KENNEDY. How long have you been connected with the baggage business?

Mr. McWADE. It is so long that I have to stop and think a little. It is about thirty years.

Mr. KENNEDY. Could you tell us how the baggage carried by the commercial traveler has been increased in quantity during that time? Is it greater in quantity now than it used to be?

Mr. McWADE. Far greater; yes, sir; it was a system that sprang up and grew gradually, the system of selling goods by sample in this country.

Mr. KENNEDY. I suppose fifteen or twenty years ago it would be a remarkable thing for a drummer to have 1,500 pounds of samples?

Mr. McWADE. Oh, yes; it has very materially increased; and while we have no direct proof, because, checking 30,000 or 35,000 trunks a day, we can not follow those trunks up to destination and see what people do with them; we suspect altogether there is a pretty large percentage of that kind of goods—that is, of goods for sale at destination, and I think if it was authorized by law the amount would be heavily increased.

Mr. STAFFORD. You do not mean to maintain that the commercial travelers of large, reputable houses will engage in carrying, in their trunks of samples, the goods that they sell throughout the country?

Mr. McWADE. I do not mean to imply anything, but I mean to say that if this bill is passed in the language that is used, if it suited the owners of that baggage to do that with it we would be compelled to carry it for them.

Mr. STAFFORD. You said that you conjectured that that might be the practice.

Mr. McWADE. Yes.

Mr. STAFFORD. And I was asking if you believed that that was the practice of commercial travelers of reputable commercial houses?

Mr. McWADE. I do not know. I could not answer that question.

The CHAIRMAN. Do you make any effort to prevent that now?

Mr. McWADE. No, sir; it is impracticable to do it. How could we do it?

The CHAIRMAN. I do not know. Do you accept all sample baggage that is presented to you?

Mr. McWADE. I have heard occasionally of reports in the Southwest or somewhere out West where it was known that some one who had checked baggage from New York was selling it there out of trunks, but I could not follow those matters up, and I am not concerned in that, particularly.

The CHAIRMAN. Does your road accept all the sample baggage that is presented to it for carriage?

Mr. McWADE. Yes.

The CHAIRMAN. Without question?

Mr. McWADE. Without question; yes, sir.

Mr. RICHARDSON. Why do you do that? Is it because you have not got any authority to unlock a man's trunks and see what he has got in there, and you do not want that authority?

Mr. McWADE. No.

Mr. RICHARDSON. You do not want it, do you?

Mr. McWADE. We presume that it is proper matter for checking.

Mr. ADAMSON. The drummer does not make any secret about the contents of his sample cases?

Mr. McWADE. We do not make any question about it.

Mr. ADAMSON. Does the Indiana drummer to-day get his samples shipped as excess baggage at a lower rate than as freight?

Mr. McWADE. I was rather surprised that this rate question was raised, because these gentlemen this morning expressly disclaimed any contention to bring that up.

Mr. ADAMSON. It might affect the matter to know that for hauling baggage on a special train you get a little higher price as a special facility than for doing it on a freight train.

Mr. McWADE. I will say that for three-quarters of the business the freight rate is no higher than it was twenty years ago.

Mr. KNOWLAND. What is the rate from New York to Chicago?

Mr. McWADE. I could not give you that. It is practically what it was——

Mr. ADAMSON. I am not talking about lowering rates; I am asking if you haul it as excess baggage at a lower rate than if you hauled it as freight. That is what the gentleman said was done in Indiana. That is not done on your trains?

Mr. McWADE. No, sir; if this bill as originally drafted, requiring the rate to be $12\frac{1}{2}$ per cent for 100 pounds of the ticket rate, had passed, in very many cases we would carry so-called sample baggage a distance of 40 miles or less at about one-fourth of the freight rate.

Mr. ADAMSON. I am talking about what you do now. This bill has not passed yet.

Mr. McWADE. Yes; no, sir.

Mr. ADAMSON. Is it true now that you haul excess baggage at a less rate per hundred pounds than you would haul it for if it was on a freight train as freight?

Mr. McWADE. No, sir; we do not.

Mr. ADAMSON. That is all I wanted to know.

Mr. McWADE. Yes.

The CHAIRMAN. You charge a considerably higher price, do you not?

Mr. McWADE. I did not go into that question at all.

The CHAIRMAN. Do you not charge about the same as express rates?

Mr. McWADE. About.

The CHAIRMAN. That has been my experience.

Mr. McWADE. About. The rate per hundred pounds from here to New York is 95 cents. I believe it has been that for twenty years. What the freight rate is per hundred pounds I do not know.

Mr. BARTLETT. It is about one-half that.

Mr. McWADE. Well, Mr. Chairman, this has already been referred to at some length, but I will just add that, as if it would not be enough to compel us to carry merchandise for sale if it suited the purposes of the owners of the baggage to do so, we are further called upon to discriminate in favor of a small class—as Mr. Deering says, not over 15 per cent—and carry it in all cases on the same train with the passenger. As you are aware, the free allowance of baggage is 150 pounds without further charge, and thus the price of the passenger ticket is more liberal than in any other place on the globe, with the possible exception of England, on a first-class ticket; less than that on a second-class ticket in England. Nowhere on the globe is the allowance as much; and it is impossible to carry even this personal baggage, invariably and under all circumstances, on the same train with the passenger. There is always the intention and the effort to do so.

Mr. BARTLETT. Frequently a passenger wants his baggage to go ahead of him, does he not?

Mr. McWADE. Very frequently.

Mr. BARTLETT. I do, very often.

Mr. McWADE. As I say, there is always the effort and intention to do so on the part of the carrier, but occasional exceptions to the rule can not be avoided. There are exceptionally heavy movements at times which can not be foreseen, and for which the baggage-car space, ordinarily sufficient, is inadequate, necessitating the dispatch of some of the baggage by following trains. There are times also, particularly in the summer season, when it is necessary and expedient to load baggage cars solid with baggage and dispatch them by any trains which are enabled to haul them. Then, again, there are other occasions, such as mark the great rush of travel homeward from the seashore and mountains in the summer time, when we have

to make up whole trains of baggage cars, containing nothing else, and dispatch them over the road.

Mr. BARTLETT. And sometimes it takes weeks to get them to their destination?

Mr. McWADE. Of course, there is great difficulty at the Grand Central Station in New York, and at Twenty-third street, every autumn; but it does not last long. To differentiate between different kinds of baggage, to put one kind in a category by itself and then compel the railroads to carry it on the same train, in all cases, with its owners, regardless of the rights and interests of the great mass of the other passengers, we submit would grossly violate all considerations of reason and equity. That is about all I would have to say.

The CHAIRMAN. If this bill were a law, in what respect would you be compelled to act differently from what you now act with regard to this baggage?

Mr. McWADE. Well, we would have to carry what anybody offered.

The CHAIRMAN. Do you not now carry it?

Mr. McWADE. Yes.

The CHAIRMAN. What I want to know is, in what way would this bill, if enacted into law, compel you to differ from your present methods of acting?

Mr. McWADE. It would compel us to differ in this, that we would have to carry it on the same train with the passenger. We are not compelled to do that now, and when we can not do it we do not do it.

The CHAIRMAN. That is one difference. What other difference is there?

Mr. McWADE. The other difference is that we would be compelled to carry whatever anybody might offer in the way of goods for sale.

The CHAIRMAN. That is an assumption on your part. You now carry anything that is offered?

Mr. McWADE. We now carry anything that is offered; yes, sir.

The CHAIRMAN. So that the law would not change your situation any at all as to that?

Mr. McWADE. No, sir.

The CHAIRMAN. From what you now do?

Mr. McWADE. No, sir.

The CHAIRMAN. Is there anything else that it would make a change in?

Mr. McWADE. Nothing that I know of, except in the matter of the rates. That is not touched upon in this bill.

The CHAIRMAN. There is no rate fixed in this bill?

Mr. McWADE. No.

The CHAIRMAN. So far as the first proposition is concerned, if we should compel the sample baggage to be carried——

Mr. McWADE. Yes.

The CHAIRMAN (continuing). Without stating what train it should go on, that would eliminate that objection?

Mr. McWADE. That is, that it should be carried on the same train with the passenger?

The CHAIRMAN. No; simply stating that the extra baggage shall be carried, without stating what train it is to go on. There is no law now that says that the personal baggage shall go on the train with the man who owns it.

Mr. McWADE. No.

The CHAIRMAN. Supposing we should strike out from the bill that part which says that the baggage shall be carried with the passenger, as required by this act.

Mr. McWADE. Yes.

The CHAIRMAN. And simply require you to carry sample baggage—

Mr. McWADE. Yes.

The CHAIRMAN. As you now carry extra baggage. That would eliminate your first objection?

Mr. McWADE. You mean to say, then we would be willing to have the law passed?

The CHAIRMAN. That is what I am trying to find out.

Mr. McWADE. No; we would not.

The CHAIRMAN. What objection have you to that part of it?

Mr. McWADE. I have this objection, that the baggage service is primarily organized for the transportation of the wearing apparel and personal effects of the great mass of the public that comprises our principal travel, and my objection would be that it is now voluntary on our part, and we will do the best we can, but if at any time the exigencies, the interests, of the great mass of the public required it, we would be deprived of all our discretion to regulate it, and dispatch it.

The CHAIRMAN. Then your objection is to being required to carry sample baggage at all?

Mr. McWADE. No, sir; our objection is that we do not wish to be deprived of the power to regulate.

The CHAIRMAN. There is nothing in here which would deprive you of the power to regulate.

Mr. McWADE. Yes, there is, if it is passed as a law.

The CHAIRMAN. No, I am talking of section 1. There is nothing in there to regulate anything, except to require you to carry the sample baggage and excess baggage. Now, have you any objection to being required to carry sample baggage in the same way that you carry personal baggage and carry excess baggage?

Mr. McWADE. I would object to it—that is, to being compelled to do it by law.

Mr. RICHARDSON. Do you not carry it now without the law?

Mr. McWADE. We carry it without the law.

Mr. RICHARDSON. You carry the commercial baggage, as I understand it; you carry it as you please?

Mr. McWADE. Yes.

Mr. RICHARDSON. You put it on a freight car?

Mr. McWADE. Yes.

Mr. RICHARDSON. You do not put it on a baggage car?

Mr. McWADE. Yes; but that is voluntary on our part.

Mr. RICHARDSON. It is voluntary on your part; you put it where you please?

Mr. McWADE. Yes.

Mr. RICHARDSON. Would it alter your position if this law were passed, in any way, shape, or form, so that if you lost a commercial shipment you could not put in a defense according to what you have been doing heretofore; could you put in as a defense that that man ought to have shipped that by baggage, and therefore you will not pay him at all?

Mr. McWADE. We never refuse to pay him.

Mr. RICHARDSON. You never refuse?

Mr. McWADE. No, sir.

Mr. KENNEDY. I understand you fear if this law was passed, then there might be so much of this baggage come to you that they would demand of you to carry that you would not be able to carry baggage for others that were offering wearing apparel?

Mr. McWADE. Yes.

Mr. KENNEDY. They would overcrowd your cars?

Mr. McWADE. They would overcrowd our cars; particularly if they were allowed to carry goods for sale.

Mr. KENNEDY. Then might there not be an amendment that you could suggest, correcting that feature of this bill?

Mr. McWADE. I do not know what I could suggest. I would not like to suggest anything that would take the power to regulate that business out of the hands of the railroads, if exigencies might arise. It is in a sense voluntary now, and it would be made involuntary then, for all time. It would not make any difference whether we would like to change it then or not.

The CHAIRMAN. You say it is voluntary now. I do not understand what you mean.

Mr. McWADE. Well, it is voluntary in the sense that it is not absolutely required by law.

The CHAIRMAN. Are you permitted to carry anything that is not fixed by law?

Mr. McWADE. Are we committed to?

The CHAIRMAN. Are you permitted to?

Mr. McWADE. No, sir; what we are permitted to carry or what a passenger is entitled to have carried, under his ticket, is defined as his wearing apparel and toilet effects, and so forth.

The CHAIRMAN. You can not carry the commercial sample baggage of one man and refuse to carry it for another?

Mr. McWADE. Oh, no; certainly not.

The CHAIRMAN. It is voluntary with you to do business at all, from your point of view?

Mr. McWADE. It certainly is voluntary——

The CHAIRMAN. If your railroads would undertake to stop doing business, you would ascertain very quickly that it was not voluntary.

Mr. McWADE. We do not contend that it is voluntary, but we do not want to be compelled to carry it under circumstances that might arise to the detriment of the traveling public.

The CHAIRMAN. You do it now, and you say you do not want to do it. Why do you do it, if you do not want to do it?

Mr. McWADE. We do it within bounds.

The CHAIRMAN. You do it under any bounds that are submitted to you?

Mr. McWADE. There never have been any bounds. We would expect very soon to be within bounds if this law should pass. There would be a great freight traffic done in our baggage cars.

Mr. RICHARDSON. I can not understand, if you are doing it now, freely and without objection on the part of the common carriers, if a law should be passed requiring you to do it, why you should object to it.

Mr. McWADE. But it is limited now.

Mr. RICHARDSON. This is the provision you object to?

Mr. McWADE. Yes; the amount is limited, and it is limited to wearing apparel, and so forth.

The CHAIRMAN. We are trying to find out about it.

Mr. McWADE. Do you not understand that we might be called upon under this bill, which would permit goods for sale to be carried to destination, to carry a great deal more than we do now?

The CHAIRMAN. I think not. If this bill should be enacted, this committee would take charge of anything of that kind. But the bill is drawn, and you fear that it will not be properly corrected by the committee to cover such things, without being against the principle of the bill. Nobody is going to permit a bill to be passed that will permit the carrying of freight on fast passenger trains.

Mr. McWADE. That is the way the bill reads now.

The CHAIRMAN. That is your construction of the bill, merely.

Mr. BARTLETT. You said that the rate for excess baggage is ordinarily about the express rate?

Mr. McWADE. Is ordinarily about the express rate; yes, sir.

Mr. BARTLETT. Now, you think men who intended to sell goods, commercial travelers, would put in and carry any considerable amount of goods at the express rate when they could send it by freight for one-third or one-half as much?

Mr. McWADE. They could, in many instances.

Mr. BARTLETT. Do you suppose they would do that in many cases, ordinarily?

Mr. McWADE. They might; yes, sir. They do sell those samples that are capable of being sold as samples at destination.

Mr. BARTLETT. I did not ask you that question. You said that you would have to accept goods intended for sale; not simply samples?

Mr. McWADE. Yes.

Mr. BARTLETT. Under this construction of this second section, if anyone offered you baggage which contained goods for sale for carrying on their business, in excess of such and such an amount, you would charge them the excess baggage rate, which is about the express rate?

Mr. McWADE. Yes.

Mr. BARTLETT. Now, would a man engaged in doing business to any considerable extent pay you express rates for his goods, for carrying his baggage, which he could very readily send by freight at a much less rate?

Mr. McWADE. In distances of 40 miles he could send them for one-fourth of the freight rate.

Mr. RICHARDSON. If you were at home now on your road, and a mercantile man, a broker, should come up and give you 10 trunks, these big trunks, you would send them off for him?

Mr. McWADE. Yes.

Mr. RICHARDSON. You would ship them to wherever he directed you to?

Mr. McWADE. Yes.

Mr. RICHARDSON. What would be the difference if this were to become a law?

Mr. McWADE. I should expect that where there are 10 now there might be 25 if this became a law.

Mr. RICHARDSON. I am not asking you about what might be, but I am talking about what is.

Mr. McWADE. Yes.

Mr. RICHARDSON. What is the fact? If the 10 trunks are there and you receive them from the broker and ship them, what difference would there be about shipping those trunks as you ship them now and as you would do it if this bill were to become a law? How would it affect that shipment?

Mr. McWADE. It would not affect that shipment, except if that shipment contained goods for sale it would be a lawful transaction on the part of the commercial man, and it is not now.

Mr. RICHARDSON. You said that it might be 25 trunks instead of 10. If he was to offer you 25 trunks you would ship them now?

Mr. McWADE. Yes; of course, I would have no recourse if it was permitted by law to do it. Now we have a defense against such an increase as that.

Mr. RICHARDSON. What is your defense?

Mr. McWADE. We can fight it. It is unlawful.

Mr. RICHARDSON. On the ground that it was not baggage?

Mr. McWADE. Yes.

Mr. RICHARDSON. You would fight it on the ground that it was not baggage?

Mr. McWADE. Yes.

Mr. RICHARDSON. And the railroad would escape from it by that plea of defense?

Mr. McWADE. Yes. Of course, Mr. Mann says that he can have this bill so drawn as that it will mean something else than what it means now; but as it reads now he could increase that shipment from 10 to 25 trunks full of goods and sell them at destination.

Mr. RICHARDSON. But if he hands you 10 trunks now for transportation, you do not charge him like you do for personal baggage now?

Mr. McWADE. We charge him excess weight, yes, sir; the same as personal baggage.

Mr. RICHARDSON. The same as personal baggage?

Mr. McWADE. The same as personal baggage. There is no discrimination. It is all assumed to be baggage, at excess rates.

Mr. RICHARDSON. Then the only distinction in this law, as I can get it from you, is that if the law was passed you would be cut out of that defense that you can make now—that is, that it was not baggage, and therefore the common carrier can escape?

Mr. McWADE. No, sir; that is not the point. The point is, that if this is passed the element of voluntariness is taken from us, and there is no power to regulate it if we want to.

Mr. BARTLETT. You mean by that, if a man comes up and gives you an extraordinary number of trunks, which it is apparent are not intended for his business, you can decline to carry them now? Under this bill you could not. Is that what you mean?

Mr. McWADE. Yes; and if we found out afterwards that he had violated the law we could prosecute him for it.

**STATEMENT OF MR. W. M. SKINNER, GENERAL BAGGAGE AGENT
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD,
ALBANY, N. Y.**

Mr. SKINNER. If the chairman will permit me, I would like to attempt to make a little bit more clear what Mr. McWade has tried to say about the objection to the principle of the bill recognizing samples of merchandise as baggage and the language as it is laid out here. I am not sure that under the interpretation of this bill any goods or wares packed in trunks belonging to commercial travelers or their employers would not be accepted and checked as baggage. It has been asked, if we are now accepting them, why should we object to such an enactment? We do accept legitimate samples of merchandise, and we occasionally run across illegitimate shipments of that character. For instance, a large business has a store in one town and some 50 or 100 miles away they have another store. It is a very easy matter for them to pack up a lot of sample trunks of goods to interchange between these stores and take them to the baggage room, and if we handle these sample trunks as baggage, present a ticket sufficient to cover the baggage, and get it through for nothing. There would not be any charge.

The CHAIRMAN. They can do that now. You have no way of avoiding that.

Mr. SKINNER. We have this way. We are supposed to be alert and to watch the movements of baggage over our road, and I am free to confess that we have found several such instances in the past, and have called the attention of the offenders to the violation of the law, and have succeeded in stopping it.

Mr. RICHARDSON. What did you mean when you said they would present a large number of trunks with merchandise of that sort packed in them going to another store that they owned; that they would present that many tickets and they would have it transported free?

Mr. SKINNER. That is what they did. They would present a mileage book and would request us to take out for five passengers. If they had 750 pounds of baggage, it did not cost them anything. Every traveler uses up this mileage without baggage. The great majority of people in this country use mileage without any baggage. It is easy to dispose of a ticket with a canceled baggage privilege.

The CHAIRMAN. They could not send five trunks anyway, unless they sent five people.

Mr. SKINNER. We do not require that a man should present five passengers with his baggage. We are daily checking baggage with as many as ten tickets. The porter of the hotel will bring the tickets down, and the passenger does not show up at all.

The CHAIRMAN. You are accepting baggage for transportation without collecting the excess on it?

Mr. SKINNER. Yes, sir.

The CHAIRMAN. Although under the Hepburn bill you are liable to penalties for doing so.

Mr. SKINNER. This bill says that we shall accept excess baggage, and if a man has 10 tickets and a certain lot of baggage, the baggage goes on those 10 tickets.

The CHAIRMAN. But the man has to buy the tickets first, does he not?

Mr. SKINNER. He does; yes, sir; but he can have a mileage book.

The CHAIRMAN. Well, take a mileage book. If I present a mileage book to you, how many trunks will you check on that?

Mr. SKINNER. We would check according to how many passengers you said were going with them.

The CHAIRMAN. You would take my word for it?

Mr. SKINNER. We accept your statement as to how many passengers are going on that mileage book.

Mr. RICHARDSON. Do you allow anybody except the purchaser of the mileage book to ride on that mileage ticket?

Mr. SKINNER. Yes, sir.

Mr. RICHARDSON. I thought you did not allow anybody except the man who purchased the thousand-mile ticket to ride on that mileage.

Mr. SKINNEF. The New York Central mileage book is absolutely without restriction.

Mr. BARTLETT. So is the Pennsylvania mileage book.

Mr. WASHBURN. When the mileage book is presented, you do not inquire how many passengers are going; you take as many trunks as are offered until the baggage slips are exhausted?

Mr. SKINNER. Oh, no, sir.

Mr. WASHBURN. You do inquire how many are going?

Mr. SKINNER. Yes; particularly if there is excess baggage. If there is more than 150 pounds, the baggage man says, "How many passengers have you?" We take their word for it. We have got to take their word for it.

The CHAIRMAN. Why does a traveler pay any excess baggage?

Mr. SKINNER. This bill says we must take samples of merchandise as baggage. As I have already told you, we honor as many tickets as are presented in connection with one lot of personal baggage; but when we come to samples of merchandise, we say we will check free 150 pounds of samples of merchandise.

The CHAIRMAN. But how do you know what it is? You said if I presented you a mileage ticket and told you I had ten passengers to go, you would check me ten trunks?

Mr. SKINNER. I say that is the abuse that would come up under this bill.

The CHAIRMAN. I understood you to say that that is what you do now.

Mr. SKINNER. No; you misunderstood me, Mr. Chairman. I said that that is the abuse that would come up under this bill if it became a law; that a man could present as many tickets as he could find around the house, and say "These will cancel my excess."

The CHAIRMAN. But he would have to buy the tickets first?

Mr. SKINNER. No, I beg to differ with the chairman, they do not have to, and they have not had to buy them.

The CHAIRMAN. I would like to find that place where they do not have to buy tickets.

Mr. SKINNER. It would perhaps surprise the chairman if I should say that in certain instances of the kind on the New York Central it has been known that a man has called out in the waiting room, "Anybody going to such a place without baggage?" He wanted to borrow their tickets.

The CHAIRMAN. That is another proposition. That has not anything to do with this.

Mr. SKINNER. That is what I am coming to. This law says that we must carry samples of merchandise as baggage. Under our present regulations we allow but one ticket for samples of merchandise, unless the man says, "This man is my helper," or "a member of the firm," or he has his wife with him and some of her goods are packed in one of those trunks. We limit it to those people in order to stop this abuse.

The CHAIRMAN. You have a different system from that of the Michigan Central?

Mr. SKINNER. No; our rule is just the same.

The CHAIRMAN. The gentleman from the Michigan Central testified that they made no such inquiry about such a thing.

Mr. SKINNER. No; our rule is just the same. We recognize samples of merchandise, and we transport 150 pounds, and the limit of value is \$100, unless a greater value is stipulated at the time of checking. That is our rule.

Mr. RICHARDSON. I know people are required to sign these mileage tickets, to put their names on them, and I can not understand how others can be allowed to use those tickets.

Mr. BARTLETT. That is the rule on the Southern road.

Mr. RICHARDSON. Your rule must be different from that.

Mr. SKINNER. Our mileage book is a very liberal one. There are absolutely no restrictions or exceptions on it, except that it expires one year from the date of sale.

Mr. RICHARDSON. It is possible to practice that fraud on you?

Mr. SKINNER. It is possible, under the mileage book. It is possible under this bill. Traveling 100 miles, there are a lot of people who travel that distance without baggage, and how easy it is for anybody out of good fellowship to lend the other fellow a ticket on which to carry his baggage.

The CHAIRMAN. That would apply on personal baggage. I might try that sometime. [Laughter.]

Mr. SKINNER. It is undoubtedly done on personal baggage. We do not restrict that. We maintain that it is a free shipment, and we claim that although we voluntarily carry this on our passenger trains, we should be allowed to restrict, or circumscribe it by such instructions as we think will meet the conditions. We do not put out unreasonable restrictions. That is not the point. We do not want to be compelled to carry samples of merchandise as baggage.

The CHAIRMAN. Let me see; your excess baggage rates are about the same as the express rates on your line, are they not?

Mr. SKINNER. Yes; I guess they are a little higher.

The CHAIRMAN. Do you think there would be any great abuse of people using this law if enacted, for the purpose of carrying goods by baggage when they could carry the goods by express on the same trains and receive much better treatment of the goods?

Mr. SKINNER. I have tried to explain, Mr. Chairman, that under this bill it would be possible to ship the same amount of freight as baggage, without paying anything.

The CHAIRMAN. I know you have tried to explain that. Now I want to get at the other proposition. You and the gentleman from the Pennsylvania road seem to have a fear that people would abuse this law for the purpose of shipping goods, in order to make a sale of

them, by baggage in place of by freight. Do you think that people would use this law and pay excess baggage for the shipment of goods where they could ship the same goods by express on the same train for less money, with the goods much better taken care of, and with greater responsibility?

Mr. SKINNER. Why, yes.

Mr. BARTLETT. They get 150 pounds free.

The CHAIRMAN. They get 150 pounds free on the baggage now.

Mr. SKINNER. That is not the point I wanted to make. You know you can get almost an indefinite amount, in value, into 150 pounds, in certain samples. Can you imagine what 150 pounds of neckties would amount to, or 150 pounds of jewelry? Items of that character they do not put in excess. They could carry that along and sell it to the trade.

The CHAIRMAN. They can carry that now. This law will not change that one iota.

Mr. SKINNER. Yes; but every once in a while we catch them now, and stop them, as it stands at present.

The CHAIRMAN. You stop them from carrying goods as baggage?

Mr. SKINNER. We bring to their attention the fact that they are violating the law of New York State.

The CHAIRMAN. Give us a case where you have ever brought it to the attention of anyone in this way. I mean, I want simply to get a concrete case.

Mr. SKINNER. Well, there was a shipment of goods being made, interchanged between Troy and Syracuse. We went to them. Then there was a shipment of goods being interchanged between Fulton and Gloversville. We went to them. There was a shipment of goods from Gloversville to Burlington, and we went to those people.

The CHAIRMAN. That is the case you cited a while ago where the people were carrying goods as baggage; but that is not a case of excess baggage at all.

Mr. SKINNER. But it would be excess baggage if they would check it the way they ought to check it.

The CHAIRMAN. Yes; but this law would not affect that in any respect. It would be excess baggage if they checked it the way they ought to check it, but they do not check it that way.

Mr. SKINNER. This law does not apply only to the excess baggage. It says only excess baggage shall be carried on the same plane. It speaks of samples of merchandise.

The CHAIRMAN. Very well.

Mr. KENNEDY. This law, if passed, will not legalize the things you have been explaining, or authorize them, will it?

Mr. SKINNER. I would so interpret it, and it has been so interpreted for me by our law department.

Mr. KENNEDY. A passenger with a mileage ticket making the false declaration that he had a half a dozen people going with him when he did not, and getting a whole lot of trunks checked on that basis—we are not legalizing anything of that kind if we pass this bill?

Mr. SKINNER. Well, you understand that the ticket is the token by which we figure on a given lot of baggage.

Mr. KENNEDY. Yes; but the mileage ticket is not a token that he is going to have six people with him.

Mr. SKINNER. Yes; but on these long hauls it is as easy to get a local car ticket as it is to get mileage.

Mr. BARTLETT. Is it not a fact that if I buy a mileage ticket from here to New York and I have two passengers and I carry down the trunks to be checked and they ask me how many passengers, and I say two, and they then take the punch and punch out "B. C.," that means "baggage checked" for the 225 miles for the two people from here to New York?

Mr. SKINNER. Yes; that would be on our book, between here and New York, and they would take the mileage off for 225 miles.

Mr. BARTLETT. So that when he takes that mileage out of that book that the Pennsylvania road uses, there is evidence when that is presented to the conductor that there are two persons who have baggage checked upon that mileage book, clear through to New York?

Mr. SKINNER. Certainly.

Mr. KNOWLAND. Would you have any fear under this bill that others outside of commercial travelers would take advantage of it? In other words, how would you determine that that man was a commercial traveler? Would you have any identification?

Mr. SKINNER. There is no way we could determine it. He presents his trunks, and the assumption is from the exterior that he is a commercial traveler.

Mr. STAFFORD. In the case of commercial travelers who carry a large number of trunks, their trunks are generally of one uniform type, and by the outward appearance you can tell whether they are personal baggage or belong to one firm? They are generally initialed or have some other characteristic feature, so that this abuse is not so pressing as you are attempting to make it?

Mr. SKINNER. I wish I could make myself clear that as it is now we do control this. That is the way we realize that there is only one passenger with this lot of baggage, as you have just said; it is all marked, and we know that it all belongs to one firm. It is customary frequently for the commercial traveler in a case of that kind to have a helper for the packing and unpacking and repacking of these trunks. We recognize that, and we say, "We will let you have 150 pounds additional for your packer's ticket;" but he can not come to us as a man with a lot of personal baggage can, or send the porter of the hotel down with five or ten tickets. All our rules will apply to samples of merchandise.

Mr. STAFFORD. This bill does not say that it will be baggage for persons who do not travel. You have the same protection as you have to-day, if they attempt any such fraud upon the company.

Mr. SKINNER. It would not be of any use for our baggageman to say, "Where are they?" He would simply say, "I have sent them ahead." What good would it do us? He would say, "They have gone ahead to arrange the tables in the next hotel," and stories of that sort. In the last analysis, you have got to accept his word.

The CHAIRMAN. I can not quite understand yet how it pays a man to buy tickets and throw them away for the purpose of getting excess baggage when the charge for excess baggage is less than the cost of the tickets.

Mr. SKINNER. The ticket is salable after it has been honored for the checking of baggage.

The CHAIRMAN. Not many of them are salable for any length of time. You do not sell many of them.

Mr. SKINNER. I know; but the commercial traveler is making short jumps between town and town, and there is a great travel between the towns where he is traveling, and it is easy to sell those tickets.

Mr. RICHARDSON. The only thing that it appears to me could embarrass you if this bill was passed and became a law is this situation: Suppose that the excess baggage is presented in such an amount as to overtax your capacity to haul it. You haul it now if they pay the excess baggage on it.

Mr. SKINNER. We do, at the convenience of the company.

Mr. RICHARDSON. It is convenient if you have room in your baggage cars to haul it, is it not?

Mr. SKINNER. Yes.

Mr. RICHARDSON. So that you never refuse to haul it?

Mr. SKINNER. No, sir; only in those instances that I cited.

Mr. RICHARDSON. Now, in the event that we should pass this law so that you would not be expected to, so as to make the other baggage the preferred baggage, and require you only to haul this where your accommodations would permit, you could not be prejudiced in any way by the passage of this bill, could you?

Mr. SKINNER. Yes, sir; under the language in which it is now written. For instance, section 2 begins:

SEC. 2. That the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers—

which would mean every merchant who had a commercial traveler—and used by them for the purpose of transacting their business and carried with them solely for that purpose.

I do not know that it is the intention of that law to take care of a man who is selling from his trunks, but there is a good deal of that done, and when we find it we try to stop it. We go to the house, if it is a representative house, and call their attention to the violation of the law. The competition is not fair with a man who is doing his work legitimately and is selling goods properly, the competition is not fair with that commercial traveler who is traveling and selling from samples and sending his goods by freight and paying the freight charges, as against the man who is delivering from his trunk.

Mr. KENNEDY. One thing is certain, you ought either to carry for everybody this class of goods as baggage or you ought to carry for no one this class of goods as baggage. You ought to treat everyone alike.

Mr. SKINNER. We do. In other words, our rule undertakes to handle "samples of merchandise." The meaning of that is that they are not salable articles; that they are taken along for the purpose of making sales of similar articles, but they are not merchandise to be sold to the parties upon whom the travelers call. It may seem to your committee that there are no abuses under that rule, but I want to assure you that there are. As far as we are concerned, we do not see any necessity for a bill of this kind. As I say, we feel that we are dealing with the legitimate commercial travelers on the proper basis. We have had no protests from them.

Mr. KENNEDY. It is a fact, is it not, that in a well-filled passenger train, if each passenger had 150 pounds of baggage, you have not any baggage car to send along with the train that would hold it?

Mr. SKINNER. No, sir; that is another point.

Mr. KENNEDY. If each passenger had 150 pounds of baggage on a well-filled passenger train, about how many cars would it fill?

Mr. SKINNER. We can carry 300 pieces of baggage as they run (valises and trunks) in a 60-foot baggage car.

Mr. KENNEDY. How many pounds would they ordinarily weigh?

Mr. SKINNER. I would not want to say. I think the capacity of those cars is about 40,000 pounds.

Mr. KENNEDY. Do trunks ordinarily weigh 150 pounds when filled?

Mr. SKINNER. Well, yes; the average trunk runs from 100 to 150 pounds.

Mr. KENNEDY. It occurred to me that the passage of this bill might embarrass the railroads by compelling them to take a great lot of baggage from one passenger, so that they could not accommodate other passengers.

Mr. SKINNER. I think that is a point that should be dwelt on.

In the first part of the second page of the bill it uses the words, "shall receive and transport with each passenger," and in several places it is reiterated that the excess baggage shall also be carried "with the passenger." Now, the word "with" is bad. We do not guarantee to carry baggage with the passenger, and never have—not even the ordinary baggage. We do say we will get it on the train, if possible; but it is not always practicable nor desirable to do it. That is for the reason, as has already been stated, that those who are carrying baggage are in the minority, and it would be unfair to the majority to discommode the operation of the train by taking care of the few people who have baggage.

When you get right back to the basic principle of carrying baggage in this country, this statement will appeal to you. Those who do not carry baggage pay for the carrying of the baggage of those who do have baggage. Now, the commercial traveler always has baggage. It naturally follows that he as a class gets more for his transportation than the other people who usually travel without baggage, or carry dress-suit cases with them.

Mr. RICHARDSON. And the commercial traveler constitutes a very small proportion of the total?

Mr. SKINNER. He constitutes a very small proportion of the total travelers, and yet he is always getting this 150 pounds allowance on his ticket. It does not need any argument to demonstrate that a man is getting a little more than his money's worth when, for ten cents, he is carried from Troy to Albany, and in addition 150 pounds of freight is carried for him. It surely does not require any argument to demonstrate that fact.

The CHAIRMAN. That same argument would apply if you carried the baggage by freight?

Mr. RICHARDSON. If you had 100 men on a train that wanted to make a certain connection, and it was likely to be obstructed or delayed by being overloaded with baggage, it would be more important to those passengers to make that connection than it would for a freight train to do so, would it not?

Mr. SKINNER. It would, sir. On the New York Central we have trains which run from New York to Chicago in eighteen hours. It would be unfair to say to the New York Central Railroad, "You shall carry on that train 20 or 30 trunks belonging to one man," with the result of either shutting out other people who have personal baggage and want to make connections at Chicago with their baggage, or making it necessary to put on an extra baggage car to handle the baggage that is presented. If the latter were done it would have the natural result of cutting that train in two, because there was an extra car on it, and making us run a section of the train. Oftentimes the addition of another car does create a section on those fast trains, because they can only haul a limited number of cars and make their time.

It is those things that we want to control. That is one of the items we want to handle—samples of merchandise—at the convenience of the company. We generally get the baggage on the same train, and we are doing it on the "Twentieth Century," the eighteen-hour train to Chicago. But we do not want to be told: "You must get it on that train." We do not think it is for the best interests of all the people to do it.

Mr. RICHARDSON. In other words, you want to be allowed a little discretion as to how you are going to run your business?

Mr. SKINNER. That is the idea.

The CHAIRMAN. Is that all?

Mr. SKINNER. Yes, Mr. Chairman; if you will pardon me just a minute.

I understand from the remarks that have preceded mine that we are only speaking of this first bill, No. 1491; but I assume—it naturally follows—that this second bill, No. 16019, is still before the committee.

The CHAIRMAN. It is; and the committee will use its own judgment about considering the bills.

Mr. RICHARDSON. That is pretty much the same bill as the one you have been discussing.

Mr. SKINNER. Except that it contains a very radical departure, in that it mentions the rates at which the baggage shall be carried. We just want to point out the fact that there is a discriminating and preferential tariff provided, according to the interpretation or the wording of the bill, for sample baggage only. It does not say that personal baggage shall have that same privilege.

The CHAIRMAN. That is easy of amendment.

Mr. RICHARDSON. That would give it a preferential rate.

The CHAIRMAN. What are the rates you now charge for the carrying of excess baggage?

Mr. SKINNER. The rate amounts to about one-sixth of the passenger fare.

The CHAIRMAN. About one-sixth?

Mr. SKINNER. Roughly speaking; yes, sir—16½ per cent.

Mr. STAFFORD. What determines the charge for excess baggage in your rates?

Mr. SKINNER. The excess baggage rates are based on the passenger fare.

Mr. STAFFORD. You simply have an arbitrary percentage of charge based upon the passenger fare?

Mr. SKINNER. Yes; with a minimum rate of 15 cents.

The CHAIRMAN. What is the rate? What is the basis?

Mr. SKINNER. Sixteen and two-thirds per cent. That figures out about one-sixth of the passenger fare, adding enough to make the allowance end in "0" or "5."

The CHAIRMAN. Is that the rule all over the country?

Mr. SKINNER. That is the general rule throughout the United States; yes, sir.

The CHAIRMAN. Sixteen and two-thirds per cent, adding enough to make it end in "5?"

Mr. SKINNER. Yes, sir. There are certain sections of the country where, on short hauls, they carry a higher percentage, with good reason—that with the short haul the same energy——

The CHAIRMAN. Well, what is the rule?

Mr. SKINNER. The general rule is $16\frac{2}{3}$ per cent.

The CHAIRMAN. I understand; but on the short haul what is the rule?

Mr. SKINNER. That is our rule— $16\frac{2}{3}$ per cent, with a minimum of 15 cents. But in New England territory——

The CHAIRMAN. But I am trying to find out, if you have a rule, how you get a minimum.

Mr. SKINNER. We put it in under the rule. It is a minimum rate of 15 cents, and a minimum——

The CHAIRMAN. Oh, 15 cents?

Mr. SKINNER. Fifteen cents; yes.

The CHAIRMAN. I thought it was 15 cents a hundred.

Mr. SKINNER. Oh, no; 15 cents a hundred is the minimum rate and 25 cents the minimum charge.

The CHAIRMAN. You say the rate is higher in some cases?

Mr. SKINNER. On the short hauls; yes, sir.

The CHAIRMAN. What is the rate there?

Mr. SKINNER. It is an arbitrary establishment of rates. It was begun away back of my time, and I would not undertake to say how those rates were based.

The CHAIRMAN. It is only between specific points, is it?

Mr. SKINNER. No; it is not between specific points. The tariff is worded just as all tariffs are—that where the passenger fare is so much (for instance, we will say, a dollar) the excess-baggage rate will be so much. That is the way all our tariffs read. So if the baggage is sent between any two points where the fare is a dollar, that is the tariff that applies.

The CHAIRMAN. Is there any way in which we can ascertain what the rate is that you charge for excess baggage?

Mr. SKINNER. Yes, sir. Speaking for the New York Central Railroad, I will say that it is $16\frac{2}{3}$ per cent of the passenger fare, with a minimum rate of 15 cents per hundred.

The CHAIRMAN. Yes, I know; but you have just told us that in some cases you charge more than $16\frac{2}{3}$ per cent.

Mr. SKINNER. No; you asked me if it was uniform throughout the country, and I was trying to explain to the chairman that there were certain sections of the country——

The CHAIRMAN. Not on your line?

Mr. SKINNER. Not on our line.

The CHAIRMAN. Oh, well, that is another proposition.

Mr. SKINNER. We think that the minimum rate of 15 cents should be insisted upon. I do not think that requires demonstration—that we are entitled to a minimum; and that it is ridiculous to ask a railroad company to carry freight at 1 cent a hundred pounds, as would be possible under section 4 of this bill.

Mr. BARTLETT. What are the express rates?

Mr. SKINNER. The express rates?

Mr. BARTLETT. Yes; one witness said——

Mr. SKINNER. I do not know what the express rates are.

Mr. BARTLETT. One witness said that the excess rate was generally the same as the express rate.

Mr. SKINNER. They have no association, as I understand it.

Mr. BARTLETT. I understood one witness to say that in the case of excess baggage you charged about the same for the excess as the express rate.

Mr. DERING. Will you allow me to answer that question? I think we can clear it up a trifle. On the short hauls, the minimum first-class express rate is usually 40 cents. Our minimum is 15 cents. It is only on the short haul where these people undertake to ship freight as excess baggage instead of as express.

The CHAIRMAN. Are you sure the express minimum is 40 cents?

Mr. DERING. It is somewhere in that vicinity, I think.

Mr. KENNEDY. Forty cents a hundred pounds?

The CHAIRMAN. No; the minimum charge.

Mr. DERING. On first-class matter I think it is 40 cents.

Mr. BARTLETT. Forty cents a hundred?

Mr. DERING. Forty cents a hundred.

The CHAIRMAN. If it is a minimum, it does not make any difference.

Mr. DERING. On the long hauls their rates are less than ours.

Mr. SKINNER. It has been a well-recognized principle of transportation that there should be a minimum rate, and then the basis follows when you reach the point where the minimum does not get in its effect. In other words, where the fare is 95 cents, under that 16½ per cent tariff, up to the fare of 95 cents the rate would be 15 cents a hundred. Beyond that it goes on at 16½ per cent of the tariff.

Now, I should like to call attention to this section 4, which to us is incomprehensible, and we believe it is impracticable of application. I have tried to have it interpreted for me. I can not do it myself, and I have not found anybody who could demonstrate just how, under that regulation, we would adjust a claim for loss of samples of merchandise. I want to say here that we do pay our claims for loss of samples of merchandise, and I should like to know how we would have to adjust them. There is a penalty that goes with this bill.

The CHAIRMAN. There does not seem to me to be any difficulty about it. It would not apply except when the baggage rate was less than the freight rate. Whether it ever is less or not, I do not know. It never has been in my case. But if it were less than the freight rate, then the value of the goods would be taken on the basis of the freight rate, and you would have it. The amount paid for excess baggage would be to the freight rate as the amount that you are to pay is as to the actual value of the goods. It is a simple mathematical proposition.

Mr. SKINNER. But what would we do in cases where there are no freight rates for those goods?

The CHAIRMAN. This does not apply, then.

Mr. SKINNER. Well, that is what I say; it is impracticable.

The CHAIRMAN. It is not impracticable at all. There is no case where there is not a freight rate on goods. You can not find a place in the United States where a man can not send goods by freight over a railroad.

Mr. SKINNER. No; but there are articles that are carried as samples that are never carried as freight.

The CHAIRMAN. I guess they are all listed in the classification.

Mr. SKINNER. Of course, I do not like to dispute that statement.

The CHAIRMAN. They could be listed very easily, at any rate. That is your business. If there is something that you have not classified, the railroads ought to classify it; that is all.

Mr. KENNEDY. I confess that I do not understand the section.

Mr. SKINNER. The great point we would like to make, Mr. Chairman, is that there is no necessity for the legislation. We have never had any complaint from the commercial travelers that there was any necessity for such legislation; and we can not see the object in passing a law when it is not necessary. We do not quite see the necessity for it.

Mr. STAFFORD. On your lines, when loss arises of the excess baggage of commercial travelers, what rule is followed in reimbursing the mercantile establishment owning it?

Mr. SKINNER. We follow the same rule that we do in the case of personal baggage. In New York State there is a law (the public-service-commission act) which enables us to make a charge for any baggage exceeding 150 pounds in weight or \$150 in value, checked or carried on one ticket.

Mr. STAFFORD. Where the public-service regulation does not apply, outside of the State of New York, what rule is followed as to allowances for loss of excess baggage of commercial travelers?

Mr. SKINNER. Of course our tariff on that portion of the road reads, as I stated a little while ago, "150 pounds of samples of merchandise not exceeding \$100 in value will be carried free, unless a greater value is declared at time of checking, and charges paid thereon." In other words, we give the commercial traveler—

Mr. STAFFORD. You have not answered my question as to what reimbursement you allow for excess baggage over 150 pounds.

Mr. SKINNER. We make no difference as between whether it is excess or regular baggage, if he does not declare an excess valuation. Of course we do not ask him how much his baggage is worth; but if he does not declare an excess valuation, we attempt to stand on our limit of liability of \$100.

Mr. STAFFORD. Regardless of the weight, then, whether it is more than 150 pounds or not, if he does not declare on a higher valuation you limit him to that amount in recovery?

Mr. SKINNER. Well, yes; unless he declares a greater value at the time he checks it. We do that for this reason: In their character and the use to which they are put, samples of merchandise are essentially different from the ordinary wearing apparel carried by the ordinary traveller. The samples may be of little value, or they may be

of very great value. They may be spread out in a great many trunks and be of small value, or they may be condensed into one little trunk and be of untold value—such as jewelry sample trunks, containing \$25,000 or \$30,000 worth in one little trunk.

Mr. STAFFORD. What is the rule of the commercial travelers as to declarations where the value of their samples is in excess of \$150?

Mr. BARTLETT. One hundred dollars.

Mr. SKINNER. They do not usually declare. We find that very few people declare, even on personal baggage. They are willing to assume that risk themselves. The fact of the matter is that there are very few losses in the baggage service in this country. In comparison with the quantity of baggage handled the losses are so insignificant that they should hardly be a factor in considering the proposition.

Mr. KENNEDY. If the traveler declares a greater value, how does that affect your rate?

Mr. SKINNER. We make a special charge for any value in excess of \$150 in New York State, and that is based on one-half of the excess baggage tariff per \$100. In other words, if the rate was \$1 a hundred for excess baggage, he would pay 50 cents for \$100 of excess valuation.

Mr. KENNEDY. One-half as much?

Mr. SKINNER. One-half as much for each \$100 as he would pay for the hundred pounds.

Mr. KENNEDY. Is that an arbitrary rule of your company, or is it provided for by the New York law?

Mr. SKINNER. The rule regarding samples of merchandise is in effect on almost all the New York Central lines, I think. All of them have their tariffs to that effect. But in New York State the law provides that we shall take baggage of any character, and that we may make a charge for any baggage in excess of 150 pounds or of the value of \$150. That is the public-service commission act.

Mr. KENNEDY. How long has that been effective?

Mr. SKINNER. That has been in effect three years, I think. I would not want to say positively.

Mr. KENNEDY. That must explain some of the decisions to which our attention has been called here this forenoon, I think.

Mr. SKINNER. I would not want to say as to that.

Mr. STAFFORD. Is the practice general throughout the country of compelling the commercial travelers to declare for excess valuation above that allowed by the railroads if they wish to recover for any amount above the stated amount?

Mr. SKINNER. It is general on the New York Central lines. I do not know what the practice is on some of the other lines. We maintain that that is an equitable proposition—that the man who carries 150 pounds of baggage, worth \$25,000, when he does not declare the value, is not entitled to any greater service than the man who has 150 pounds of baggage that is valued at \$50. Of course, the man with \$25,000 worth of property is certainly getting more for his money than the man who has \$50 worth of stuff.

Mr. STAFFORD. In other words, you mean that the insurer's liability of the railroad should not extend to a higher valuation unless the railroad is compensated for the extra liability?

Mr. SKINNER. Unless there is a special agreement to that effect.

**STATEMENT OF MR. S. H. HARDWICK, PASSENGER TRAFFIC
MANAGER OF THE SOUTHERN RAILWAY COMPANY.**

Mr. HARDWICK. Mr. Chairman and gentlemen: With your timely permission and indulgence I shall be very glad to present what I have to say as briefly as possible, and to make it as coherent and as understandable to the committee as I may be able. I shall be very glad if I may have the privilege of making my presentation continuously; and then, after the close of it (and I promise you I shall be quite brief), I shall be very glad to answer any questions the committee may care to propose.

With that statement as a preface, I should like to say that, of course, we can only deal with the questions which are presented to us; that is to say, we can only consider the exact language of the bill or bills.

I may say that after having had an experience of about thirty-six or thirty-seven years in the passenger traffic, largely with the company which I now have the honor to represent, I have not had before me at any time any question of this kind as a practical proposition from anyone making any criticism of our baggage regulations, classification, or charges, nor have I known of such a request being presented to any of the traffic associations of which our line is a member. The first I have heard of this has come through certain commercial organizations, and the second as an expression before this committee in the bills now under consideration.

Bill No. 1491 says, on page 2, lines 1 and 2:

Shall receive and transport with each passenger tendering the same the baggage, including the sample baggage, of such passenger, etc.

Then, at the end of line 6:

All baggage, including sample baggage, as defined by this act, in excess of the weights herein specified, is declared to be excess baggage, and such carriers are required while so engaged to carry such excess baggage with the passenger.

I desire to emphasize the point which has been made here (because it is one that concerns the whole people of the United States, touching as it does the vital question of transportation). What shall become of all of the commerce and all the travelers of the country if they shall be submerged by a certain class or certain kind of transportation or travelers? All trains provide baggage cars of such capacity as to carry what the experience of the carriers has led them to understand is necessary. If a train carries 125 passengers, it has a baggage car of appropriate capacity. If it carries 50 passengers, it has a corresponding baggage capacity, and so forth. So, after all, in the final analysis the question of the carriage of baggage must rest in the intelligent discrimination of the carriers, provided, of course, the transportation of the country is to be undisturbed and unblocked by any such measures as are sought to be passed in these bills.

If we shall carry these articles for the commercial traveler and his employer—though I assume it is not within the bounds of reason to suppose that the committee will present a bill to the Congress which will have that kind of classification and restriction—we must, then, carry exactly the same articles for the farmer, and for the laborer, and for the artisan, and for the professional man. And what shall these items consist of? It is not merely the commerce of the country that is threatened in these measures; it is not merely the transportation

of passengers that is to be impeded; but there is sought to be put upon the carriers the enormous expense of taking the most delicate articles of mechanism of all kinds, or else we come back to the original proposition of class legislation.

As the distinguished attorney for these gentlemen has said, there is no quarrel between the commercial travelers and the carriers. He may well say that, and so may all those back of him. We have gone along in partnership hand in hand up to this time, and it is as a result of that cooperation that the country and its commerce have reached their present splendid state. I have not had before me a single practical criticism or request in this connection; but we find it sought to be crystallized into legislation. Our objection to the measure is largely of that kind.

The bill says in section two:

That the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers.

"Their employers," if you please, gentlemen. Not "other employers," but the employers of commercial travelers. And why? What shall become of the man who wants to carry these goods and appliances, catalogues, etc., if he is not an employer of commercial travelers, or is not himself a commercial traveler? The bill is adroitly worded.

And used by them for the purpose of transacting their business.

Not the business of anyone else; not the concern of anyone else; not the profit of anyone else; not the convenience of anyone else; not the expedition of anyone else; but for their business.

And carried with them solely for that purpose.

Gentlemen, we respectfully ask, How on earth can a carrier determine that these gentlemen are carrying this baggage solely for that purpose? And why "solely?" The word is well chosen. It can not deceive the representative of the carrier. "Solely for that purpose." It means, as these gentlemen have stated before me, an opportunity to invade the commerce and the trading of the cross-roads man, the small retail man, and the other men who are your constituents as well. It is needless to say, "this may not be done," or to ask us analytically if we know that it is done. There is the opportunity; there is the invitation; and as intelligent men you know what must be the result.

House bill 1491, section 1, requires that carriers shall receive and transport with each passenger tendering the same the baggage, including the sample baggage of such passenger, not exceeding 150 pounds for an adult, etc.

Section 2 gives the definition that the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers and used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling, are hereby declared to be sample baggage within the meaning of this act, and such carriers are required to transport the same with the passenger as required by this act.

This second section is the purpose and meaning of this legislation—that is, that commercial travelers and their employers shall be

created as a special class, the specific and exclusive beneficiaries of the act. This same class legislation is again set out specifically in section 4 of the bill.

It is our opinion that the decision of the Supreme Court of the United States in the Michigan Mileage case has an important bearing upon this baggage bill, and that the same principle laid down in that case will govern in the baggage case, and this baggage bill if it ever passes will be held to be unconstitutional. The bill itself is extremely objectionable. It not only seeks to make class legislation in favor of passengers carrying merchandise as baggage, but specifies that the samples, goods, wares, appliances, and catalogues of commercial travelers or their employers are required to be transported as baggage, thus setting commercial travelers and their employers in a class by themselves. Furthermore, the bill does not classify what may be sample baggage, but apparently includes everything carried by this specific class of passengers, including all kinds of fragile articles, glassware, china ware, mirrors, pictures, etc., articles of delicate mechanism, such as typewriters, cash registers, etc.

No limit is set as to the amount of excess baggage which shall thus be carried. No requirement is made that the specific class of passengers shall adhere to any specifications of the bill, although section 3 specifies that it shall be a misdemeanor, and upon conviction a fine of not less than \$25 nor more than \$100 shall be assessed against any common carrier violating any provision of the act. No penalty is provided for violation except by the carrier—no penalty against a passenger.

No valuation is set as a limit for the amount of the claims of the passengers having such baggage damaged, lost, or stolen.

An example of the class discrimination would be found in a case where, say, a certain hardware merchant doing business on one side of the street, and being employer of commercial travelers, could within the specifications of this act have his baggage defined to include samples, tools, catalogues, etc., whereas his competitor across the street, who was not employer of commercial travelers, could not within the specifications of this act carry his baggage, similar samples, tools, catalogues, etc., the distinction being that in one case one man is an employer of commercial travelers and in the other case he desires to build up a business, and although not yet an employer of commercial travelers, could not have the same privileges accorded to him on that account. The railroads have never sought to make any such discrimination.

Again, a commercial traveler could carry samples of medicine, chemicals, surgical apparatus, etc., by reason of his being a commercial traveler, whereas a professional man, such as a physician or surgeon, would not be able within the specifications of this act to carry similar medicines, chemicals, surgical apparatus, etc., as baggage.

The only safe and reasonable way, it seems to us, is to let this matter of baggage definition alone, or else find the definition to an exact meaning of the word baggage, and not seek to amplify and to diversify this definition in favor of certain class or classes.

Samples, goods, wares, appliances, catalogues, etc., might, as we have previously pointed out, mean musical instruments, articles of delicate mechanism and of great cost, typewriters, sewing machines, cash registers, mirrors, cut glass, fine china, chemicals, and a thou-

sand and one innumerable articles of delicate and difficult character and of immense cost, all such as might be claimed to be immensely valuable. All of these, and indeed samples, goods, wares, appliances, etc., of every kind are permissible under the original bill.

Who is to determine who are commercial travelers or their employers, who may offer such articles to be checked as baggage?

How will it be determined that commercial travelers do not offer for sale or make delivery of such samples, etc., or if they do make such sale or delivery, what is the penalty under the law proposed?

How will commercial travelers and their employers be distinguished from any other passenger?

Will it be for the carriers to determine this classification of its passengers?

Mr. Chairman and gentlemen, we have no quarrel with the commercial travelers of the country. We stand here just as nearly as we can with the commercial travelers of the country. But I submit to you, respectfully, that it is one of the greatest mistakes of the commercial travelers (and, strange to say, in my opinion it is the outgrowth of the organization of the commercial travelers) that they consider themselves in some way to be separated from all the balance of the public. They think that privileges may be granted to them in some way by the legislatures or by Congress or by the carriers that will set them aside and make them different from other passengers. The railroad companies do not know how that can be done.

Therefore, we say to our friends, the commercial travelers and their employers, who are the wholesale men of this country, "We can not do this for you. We can not do for you anything different from what we do for the smallest one of our patrons, relatively speaking." If there is a merchant engaged in a small town of 200 people in the State of Georgia, we want that man to have all of the protection that the largest commercial house in New York or Chicago or Boston or St. Louis or anywhere else has. We do not care whether he is a commercial traveler or whether he is an employer of commercial travelers. It never has entered into our minds to ask any such question.

I read from the preamble to the constitution and by-laws of one of the most important organizations of commercial travelers:

For the purpose of furthering the interests of commercial travelers by giving them better hotel and railroad accommodations, cheaper rates of travel, and greater allowance of baggage, we, a portion of the commercial travelers, fraternally bind ourselves, etc.

I now read from the chairman's report of the same organization; and I may say before doing so—and I say it without any unkindness and without any kind of hostile criticism—that I do not blame any body of men for organizing and pushing their own interests in an intelligent way. But we do argue and submit that they ought not to ask, either of the carriers or of the Congress, anything which shall hurt the whole body of people. It has been shown to you, as I said in the beginning, that all the carriers arrange what their experience has led them to determine to be adequate capacity for the reception and conduct of the baggage that may be offered. In my home town of Montgomery, Ala., I happen to know of one firm which has seven travelers. Those travelers go out on Monday

morning and carry 10 trunks each. There are 10 trunks, 70 pieces of baggage, from one firm. I have had it reported to me that on one occasion there were on one of our fast limited trains—No. 37—out of Washington (with which Judge Bartlett and Judge Adamson are acquainted) as many as 36 pieces of baggage offered by one drummer. The capacity of that train was only 85 pieces, and we carry on it 150 passengers. What shall become of the other part of the public?

Now, all along—and allow me to emphasize and repeat that—there is no quarrel between us. These gentlemen have said so in the hearing. There is no ground for it. We have gone to the limit of indulgence; and until there shall appear a quarrel, or a necessity for the legislation, why pass it?

They say it is anticipated. We have been in business since the first railroad was operated, long before the commercial travelers were organized. There never has been such a quarrel, and there is not now.

I am now going to quote from the gentleman who was chairman of the transportation committee of this association; and I do this with reference to the question of rates. I do not do it unkindly; it is their business, or their conception of their business; but I wish to show that they seek to present some kind of measure which shall, as I say, set them into a separate class of the great body politic of the country. The carriers have constantly tried to resist it. This is on the question of the rates, whether or not the 2-cent rate, which was then (in 1906) being agitated, was beneficial to the commercial traveler.

As representatives of the great wholesale and manufacturing interests of this country, who to-day in most cases are able to secure a better rate than that given to the general public, are we consulting our best interests when we advocate a uniformly low rate for everybody? Take the territory around St. Louis, for example: We secure through mileage at 2 cents per mile, except in the southwest, and there is a reasonable probability of our being able to secure it in that section.

I may say that has been realized.

Through our merchants' associations we are able to secure a rate of 2 cents a mile for our customers to come to market and buy their goods. Who, then, will be benefited by the change? Not the drummer or the merchant, surely, for they have that rate now; but the farmer and the artisan.

Gentlemen, actually the farmer and the artisan will be benefited by the rate, but not the commercial traveler, nor the drummer, nor the wholesale merchants of St. Louis.

It may be of advantage to our great department stores to have these people—

That is, the artisan and the farmer—

come to the great centers to buy their goods. But is it to us, the commercial travelers? Is it not a fact that our best customers are what we designate as the country merchants? And is it not a further fact that these men depend for their business upon the only class whom we propose to benefit by a reduction of the rate? If we bring John Smith's customers from Smithville to buy goods at St. Louis department stores, we are certainly cutting off the outlet for our merchandise through John Smith of Smithville. We are quick to recognize this truth when it comes to us in the guise of parcels post, which we believe will facilitate the movement of merchandise direct from the mill or the houses to the customers; but somehow we find it difficult to recognize the same principle in railroad fares.

I will refrain from reading further from this.

Mr. ADAMSON. I should like to get that gentleman's name. He is the first one I have heard of in a long time who thought about the "ultimate consumer" and the farmer. [Laughter.]

Mr. HARDWICK. Judge Adamson, unless you insist upon it I do not care to give his name.

Mr. ADAMSON. Oh, no; of course not!

Mr. HARDWICK. I do not want to have anything enter into this in the way of a controversy. I am trying to state the question fairly as I see it. I have tried to look at it in a sympathetic way from the standpoint of the other fellow. I am here to say to you gentlemen (and I have so said to our commercial friends in many of their meetings) that I do not know of anything that is more harmful to their interests than the particular piece of proposed legislation that is now presented.

Now let me say a few words on the subject of releases. I am sorry our business is of such a character that much of it is technical, so that unless some member of the committee has had some experience with it, it is somewhat difficult to tell him what we mean in the language of the tribe. But when we say "a release is given," in our part of the country, at least, we mean that if, by way of illustration, we take for a moving picture show a gas tank or any delicate apparatus as baggage, we have the shipper sign a release. He puts a valuation on it. Then he does not pretend to claim any more than that from us, or else we do not take that as baggage. That is what we mean by a release.

I think it was Judge Kennedy that asked if we carried cats and dogs as baggage. We do carry cats and dogs, and ponies, and other live animals that are in shows. We carry them, of course, properly protected and under baggage regulations. The infinite classification of baggage as already made by the carriers is so great as to include every practical and reasonable piece of baggage that is offered by the commercial traveler—so much so that I do not know that they could ask us to increase it. I do know that they have never asked us to increase it without our doing it, or else explaining to them just exactly why we could not do it; and generally that has been satisfactory. I do not know of any persistent complaints.

I am very much obliged for your attention; and I shall be glad now, if there are any questions you wish to put to me, to answer them.

Mr. ADAMSON. I should like to know what this discrimination in age has to do with it. Did you ever know of any drummer under 12 years of age?

Mr. HARDWICK. That, of course, is put in for the general public. That is the first paragraph.

I did not finish with reference to bill No. 16019, which, as I understood from the chairman, is also under consideration. The only change that we see—at least, from reading it hurriedly here; as I said, I have not gone into it very carefully—is the enlargement of section 2, beginning with line 22:

Provided, That the maximum charge for transporting excess, etc., shall be the rate named.

I think it has already been stated to you by all the gentlemen who appeared in advocacy of the bill that it was rather an unusual, and seemingly to their minds a dangerous, proposition to bring before this committee the question of rate making. We think that power

has already been lodged by this committee and by the Congress in general in the Interstate Commerce Commission. If the commercial travelers have any complaints to make about any excess baggage charge, of course they should take them there. I think you gentlemen would so refer them.

Section 4 of bill No. 16019 repeats the description of how losses may be adjusted. Judge Kennedy said this morning that he did not understand it. I have never heard of any railroad man who did not understand it. I was entertained by the attempted explanation of our friends who are advocating the measure. Of course that explanation would be very beautiful, and it would be plain even to a railroad man if the conditions were just as stated. Commercial travelers, you know, are not confined to carrying the right shoe in one sample set and the left sample shoe in another sample set. There are commercial travelers who carry whole pieces of coats and hats and other articles which may not be separated. There are also commercial travelers and employers who have very large department stores; and those travelers carry all kinds of samples. They may carry dry goods, or notions, or jewelry, or fancy drugs, or fancy soaps, or fancy groceries, or any other thing. We are checking the baggage of men of that kind. If they were all handling simply the right-foot shoe or the left-foot shoe we could determine that matter without the aid of Congress. But when we have one man with 10 trunks or 30 trunks, and one has this and the other has that, or one has many of the same things, how will this section help us to define what is our actual liability?

I think, gentlemen, with all due respect, that the proposition in both of these bills is hardly understandable by the railroad man—at least, in the way that it reads. And if there are to be any changes, we shall be very glad to have an opportunity of considering those changes and appearing again.

MR. ADAMSON. If you had a left shoe, and the right one was lost, the one that was lost would represent just as much loss to you as a whole pair of shoes, would it not?

MR. HARDWICK. The left shoe, he said.

MR. ADAMSON. Either one; if you had one, and the other one was lost?

MR. HARDWICK. Which one is it now, Judge?

MR. ADAMSON. I do not care which one it is. You can take your choice.

MR. HARDWICK. I will take the right one. If I had a wooden leg, the left one would not do me any good.

MR. ADAMSON. I say it would be just as much loss to you, though. You have not a wooden leg. If you can not answer my question about the twelve years' discrimination in age (which I can not see any applicability for in this drummers' bill), I want to ask you another question that I know you can answer. The limited train that you mentioned is very important to our part of the country.

MR. HARDWICK. Yes, sir.

MR. ADAMSON. A great many connecting points, you understand, depend on the schedule and connections that train makes for their mail and passengers. Many a time I have had to pay a hotel bill in Atlanta because the train did not reach the connecting point in time.

MR. HARDWICK. That was hard luck.

Mr. ADAMSON. Now, Major, is it fair to the passengers and to the people expecting mail to allow one man to obstruct and delay that limited train along at local stations with 36 pieces of baggage when you have other freight and express trains to haul them on?

Mr. HARDWICK. Judge, I am glad you asked that question, because it is pretty nearly the whole argument. That actually did happen in the movement of that train at a place called, I think, Gaffney, S. C., in the case of a drummer going probably to Spartanburg, a distance, we will say, of 50 or 60 miles. There were 36 pieces of baggage offered by that man. What could we do? Unless you gentlemen will let those matters be conducted in the way they have been so well and so successfully conducted in the past—

Mr. BARTLETT. What did you do? Did you take it?

Mr. HARDWICK. No, sir; we could not take it.

Mr. BARTLETT. I just wanted to know.

Mr. HARDWICK. We forwarded it, of course, on the following train.

Mr. ADAMSON. Do you not run that train under penalties to the Post-Office Department in case of delay?

Mr. HARDWICK. Yes, sir. That is another question that I am sorry we have all overlooked. Congress has passed laws automatically imposing upon us penalties for failure to make mail connections.

Mr. STAFFORD. I should like to interrupt you right there to say that I believe that law has been repealed.

Mr. HARDWICK. Has it, sir?

Mr. STAFFORD. Two years ago the Committee on Post-Offices and Post Roads repealed the provision imposing penalties upon the railroads.

Mr. HARDWICK. If there is not now a penalty in the way of an actual assessment against the railroads, there is a severe penalty in public opinion, and in the interruption and delay of the commerce of the country. We are criticised every day—you know that yourself, Judge Adamson, and Judge Bartlett knows it—by the newspapers in your State for our trains being delayed.

Mr. ADAMSON. Your very object in limiting that train is to make time and to make connections?

Mr. HARDWICK. Yes, sir. We deal with the baggage question fairly and liberally and, we think, intelligently, and we respectfully ask the committee that it be left undisturbed unless some more substantial reasons can be set out than we have heard. If that is done, we would like to have an opportunity to discuss the matter again before your body.

Mr. ADAMSON. Major, I want to ask you one more question. Has there been any disposition on the part of your road or any of the railroads in our part of the country to refuse to give the drummer boys all the accommodation they want in handling their baggage?

Mr. HARDWICK. No, sir; there never has been such a case, and we challenge the production of proof that there ever was. There never has been.

Mr. ADAMSON. As you know, the drummers in our part of the country are mighty good boys. We all like them and want to do everything we can for them.

Mr. HARDWICK. That is all right. The same thing is true all over the country. I want to say that some of my very best friends are, as you say, the "drummer boys."

Mr. ADAMSON. They are the smartest part of the population of our part of the country by a long way.

Mr. HARDWICK. They certainly are.

Mr. KENNEDY. I have some good drummers in my district, and there is one thing I never could understand. After we passed the Hepburn rate bill, every time I would meet a traveling salesman he would begin to take me to task for having participated in passing that bill. He seemed to think we had done something that compelled the railroads to act toward them in an entirely different way than they ever had before. What was the occasion for that?

Mr. HARDWICK. Judge, I want to say, and I think I can say it truthfully, that the carriers did all of their fighting against the Hepburn bill before its passage; and they have all been absolutely obedient to it ever since. I was on an inspection tour of our road recently, and I stopped at an important ticket office. The man in charge of it has been in our employ there for over thirty years. He said to me:

You are getting very hard now with the ticket agents. You require us to make these statements and settlements, and if we make a mistake in selling through tickets we have to correct it—

And so forth, and so forth.

Naturally, all of that comes under the Hepburn Act. The Interstate Commerce Commission have their inspectors—and properly so—examining the books of the carriers; and they have rules that these mistakes are not to be ignored, because they might finally run into rebates and into connivances and devices which the law expressly forbids. You will find that a great many people who do not understand that a railroad company has to and does obey the law will criticize the law. I can say truthfully, again, that I do not know of any railroad man who has ever sought, in any way, shape, or form, to discredit the Hepburn bill before the public or before his employees.

The CHAIRMAN. You do not know of anyone who advocated it before it passed, do you—or any other bill that we have passed relating to the railroads, or imposing any burdens on them?

Mr. HARDWICK. I could not say about that.

Mr. BARTLETT. Mr. Samuel Spencer, the president of the Southern Railroad, appeared before this committee and made a speech in which he said that he thought the railroads ought to be regulated.

Mr. HARDWICK. Yes; I do not think you will find any trouble with the railroads on that proposition.

Mr. KENNEDY. When I go home from Washington to Youngstown, I have mileage over the Baltimore and Ohio Railroad. They will tear out mileage to Newcastle Junction, and then I have to pay cash fare up to Youngstown. If I happen to go home with not enough mileage in my book to bring me back, I can not buy an eastern mileage book in Youngstown. Do you think that is done intentionally, to annoy people, or what is the occasion of that sort of thing?

Mr. HARDWICK. No, sir; I think the intention is simply that the public shall use the reduced-rate transportation within the special conditions under which the carriers have found it possible to do that intelligently and reasonably. They can not properly separate you from anybody else, Judge, and take you from here to Youngstown (or they ought not to do so), unless they are going to make a flat rate and take the whole public there at the same rate.

Mr. KENNEDY. I think they ought to take the whole public there at the same rate.

Mr. HARDWICK. Yes, sir; that is the point. Until they get to that point, of course, they can not do the other thing. As soon as they can, the railroads have always reduced their rates automatically, just as the business would justify it.

Mr. KENNEDY. I never believed that the railroad mileage-book scheme ought to be favored at all.

Mr. HARDWICK. I am glad to hear you say that, sir.

Mr. KENNEDY. I think every man ought to have as good a rate as I get.

Mr. HARDWICK. It is the most iniquitous form of transportation.

Mr. KENNEDY. But those roads have an accounting between the auditors. It is one management right straight through.

Mr. HARDWICK. Of course you know the history of the origin of the mileage book. It was a concession to the commercial travelers; and as an outgrowth of that it came to be used by the whole public after the interstate-commerce law was passed, in 1886.

Mr. KENNEDY. A great many people have in some way been led to think that all those things were caused by the passage of the Hepburn bill. The drummers, especially, seem to think so.

Mr. HARDWICK. I do not think that is—

Mr. BARTLETT. That was like putting the blame for the panic on Hoke Smith, in Georgia.

Mr. ADAMSON. I know that for a good while some of the railroads out in the country would refuse to sell tickets and check baggage on connecting roads. Was that only temporary, until they could learn the rates?

Mr. HARDWICK. Oh, I assume so. There was naturally a great commotion caused by the changes in the intrastate tariffs; and the Interstate Commerce Commission held that we did not have to observe the literal reading of the law at once, because it was impossible to do it, as there was such confusion prevailing. But as soon as we could do it, as rapidly as possible, we showed our good faith in doing it, and we did do it.

Mr. ADAMSON. Some folks charged that you were resenting the legislation and taking the position that if the public wanted to regulate you they could take just what they got according to law, and nothing else. You were really just waiting to adjust your rates to the changed conditions?

Mr. HARDWICK. Absolutely; the commission can tell you that, sir. We were acting under their advice, and really under their guidance, all the way through.

The CHAIRMAN. Senator Faulkner, have you any other witnesses?

Mr. FAULKNER. No, Mr. Chairman. We propose to close our hearing on this question. I will have here to-morrow, if you desire it, one or two gentlemen from the western roads whose views you or some members of the committee said they would like to hear in reference to the 16-mile-an-hour bill.

The CHAIRMAN. We may not be able to hear them. We will begin right away to-morrow on the interurban and electric roads.

Mr. ADAMSON. Senator, it was suggested to some of us (and it looked a good deal that way) that those roads that were not accused

of anything were coming here and making a showing, and we want to hear the views of those that the blame was put on.

Mr. FAULKNER. I will have here to-morrow the representatives of the roads that were accused of anything, and can keep them until day after to-morrow if it is the desire of the committee to hear them.

Mr. CONBOY. Mr. Chairman, I should like the privilege of speaking for just a minute or two in answer to some of the suggestions that have been made to the committee. I shall not take up the time of the committee for more than a few minutes.

The CHAIRMAN. We have all got to be on the floor, I think.

Mr. CONBOY. If that be the case, of course I can not insist upon speaking.

The CHAIRMAN. We will hear you in the morning; or you can submit a written statement.

Mr. CONBOY. I did not intend to take more than two or three minutes at the outside.

The CHAIRMAN. We will give you three minutes. Go ahead.

FURTHER STATEMENT OF MR. MARTIN CONBOY.

Mr. CONBOY. Mr. Chairman, the arguments advanced by the gentlemen who have appeared in opposition to the proposed legislation are reducible to two main ones. The first—that suggested by Mr. Dering—was that the bill would involve the imposition of a rate that would be unfair to the railroads. We are not here prosecuting the proposed bill fixing the rate for the carriage of excess baggage. In connection with that, the argument was made that the opportunity to offer excess baggage would result in commercial travelers bringing tremendous amounts of freight for the purpose of having it sent as excess baggage to the persons who would ultimately purchase it. If that were done, it would be a direct violation of the provision of the law itself, which relates only to samples, goods, wares, and merchandise used by commercial travelers solely for that purpose. It has nothing at all to do with the ultimate sales that are made by the traveler, and the freight that results therefrom in connection with the delivery of the merchandise.

Mr. FAULKNER. Mr. Chairman, I should like to ask Mr. Conboy whether there is any penalty imposed upon those whom he represents in case that law is violated?

Mr. CONBOY. The railroad company could refuse to receive it just the same as they could refuse to receive it from an ordinary tourist offering merchandise as personal effects. But there is as much danger of the ordinary tourist offering great quantities of merchandise as his personal effects, to be shipped to the points where they have been sold, as that a commercial traveler would send quantities of freight in the same fashion.

Mr. FAULKNER. Why not impose a penalty for violation of the law?

Mr. CONBOY. Excess baggage is the same in both instances, whether it be personal effects or simply baggage.

This morning I suggested to you that there were cases in which the right to recover for loss of sample baggage had been determined by the courts. You asked me for one of them, Mr. Stafford. In the United States Supreme Court it was decided, in the case of Hum-

phreys v. Perry (148 U. S., 627), that a commercial traveler or his employer has no right of recovery for the loss of goods that had been shipped as baggage and were actually merchandise in the shape of samples. In passing upon that question the court, at pages 642 to 647, reviews cases from Massachusetts, New York, the House of Lords of England, the common pleas court of England, Illinois, Minnesota, and California, overruled the case of *Kuter v. Michigan Central* (1st Bissell), and reaffirmed the doctrine that it had laid down in the case of the *Switzerland Marine Insurance Company v. Louisville, Cincinnati and Lexington Railway Company* (131 U. S., 440). And the New York Central Railroad Company, which was represented here so ably this afternoon by its baggage master, was the railroad company in the case where the court of appeals of New York laid down the doctrine that I stated to you this morning. I refer to the case of *Trimble v. The New York Central and Hudson River Railway Company* (162 N. Y., p. 84), a case decided as late as the year 1900. There the New York Central Railroad Company had attempted to defend against the recovery of a trunk full of shoes on the ground that they were checked as baggage and were actually merchandise. It was claimed that a deception was practiced upon the railroad company, although they knew the character of the trunk as a sample trunk. They also attempted to defend upon the ground that the employer of the man had no right to recover when the contract was not made between him and the railroad, but between the employee and the railroad.

You asked me, Judge——

The CHAIRMAN. Your time is up.

Mr. CONBOY. Very well, sir.

The CHAIRMAN. I have here an extract from the annual address of Mr. Jastro, president of the American National Live Stock Association, which the stenographer may insert in the record.

(The extract above referred to is as follows:)

EXTRACT FROM ANNUAL ADDRESS OF H. A. JASTRO, PRESIDENT OF AMERICAN NATIONAL LIVE STOCK ASSOCIATION, DELIVERED AT DENVER, COLO., JANUARY 11, 1910.

In his Des Moines address and in his message to Congress President Taft indorsed the proposition that the Interstate Commerce Commission shall have the power to postpone, by order, the date effective of any new rate or classification, provided that within thirty days after such order a complaint has been filed against such rate or classification, or provided the commission has itself instituted an inquiry into the reasonableness of said rate or classification. This is substantially the proposition approved by our association at its last two annual meetings and is a very important and necessary amendment to the present interstate-commerce law. Railroads ought not to be permitted to arbitrarily advance rates which have been in effect for many years without submitting complete and satisfactory proof that said advances are reasonable. Only in this way can the burden be placed upon the railroads of proving that a rate is reasonable. At present the shippers are compelled to make the proof that the rates are unreasonable, and at the same time are obliged to pay the advanced rates, with but little, if any, likelihood of ever being able to recover that part which may ultimately be declared to be unreasonable. This amendment will meet with general indorsement throughout the country because of the many actual and threatened advances in rates. The time to decide whether a rate is reasonable is before it is put into effect, and not afterwards.

The recommendation of President Taft that the Interstate Commerce Commission be granted power to review classifications and to modify and annul any changes in regulations; to institute proceedings upon its own motion; to compel the establishment of through routes; to fix the rates for such routes, and to prescribe regulations under which

shippers shall have the privilege of designating the route over which their shipments shall be carried, are all manifestly fair, practical, and necessary amendments to the present law, and should be indorsed by this association.

It is gratifying also to note the further recommendations of the President, that no railroad shall issue any additional stock or bonds except upon the approval of the Interstate Commerce Commission, and that no railroad shall acquire stock in another competing road. Had such legislation been enacted years ago many of the evils we now complain of would not exist. However, it will prevent in future any issuance of stock representing nothing but water, and will help to preserve what little competition there is left among the railroads of the country.

There is, however, grave doubt of the wisdom of creating a special tribunal to review the orders of the Interstate Commerce Commission, and of the proposal of the President to lodge in the Department of Justice all proceedings to enforce or defend the orders of the Interstate Commerce Commission. History has shown that the multiplication of special courts has retarded rather than promoted justice. To transfer the power to enforce or defend the orders of the Interstate Commerce Commission to the Department of Justice, I fear, spells further delay and a divided responsibility. They appeal to me as a well-concealed attempt to emasculate the present law, and should be carefully considered and discussed. Our attorney, Mr. Cowan, who had a great deal to do with the framing of the present interstate-commerce law, will address you at length upon these proposed changes, and I will therefore not attempt to discuss them further.

I regret, however, to notice that in his recommendation the President does not make any reference about requiring the railroads to furnish cars and other transportation facilities upon reasonable notice, or to empower the Interstate Commerce Commission to regulate the service. This is an exceedingly important requirement, so far as the transportation of live stock and perishable freight is concerned. Naturally, perishable freight incurring extra expense during delay should have preference. During the past year there have been a great many complaints about the failure of the railroads to furnish cars, even when cars were ordered months in advance. In several instances that have come under my notice the railroads have wholly disregarded their plain duty in this respect. They have used their live-stock cars for the carriage of other freight, while live-stock shippers have been forced to hold their herds at the loading point waiting for cars. Last year the railroads had sufficient cars to take care of the live-stock traffic, and there was no delay in furnishing them. This year there has been no increase in the volume of live stock transported, yet there has been a pronounced shortage of cars, indicating quite plainly that the live-stock equipment has been used for other classes of freight. The complaint as to shortage is not confined to any one section of the country. We hear the same story from Texas, New Mexico, Arizona, Colorado, and Wyoming. The only way to correct this ever-recurring shortage is to enact a law compelling the railroads to furnish cars upon reasonable notice, and fixing adequate penalties for failure to do so, at the same time providing for a reasonable demurrage to be paid by the shipper should he fail to load the cars on the date for which they were ordered. The service of the railroads in handling live stock after it is loaded is not as good this year as last. Formerly it was the custom to give live stock a little special attention. Now it is treated like any other class of freight, being handled in the same trains and at the same speed as dead freight. In order to secure better service, the Interstate Commerce Commission should be empowered to prescribe a fixed reasonable speed minimum, adjusted to meet the varying conditions in different parts of the country.

The CHAIRMAN. I also have resolutions adopted at the Thirteenth Annual Convention of the American National Live Stock Association, a portion of which refer to these bills to amend the Interstate Commerce Act. These may be inserted in the record.

(The resolutions referred to are as follows:)

RESOLUTION No. 7.

RELATIVE TO FURNISHING CARS TO TRANSPORT LIVE STOCK AND OTHER PERISHABLE FREIGHT, AND TO GIVE PROMPT AND EFFICIENT SERVICE.

Whereas many of the railroads have failed to supply themselves with sufficient facilities to perform their duties as common carriers in receiving and transporting live stock, and have failed to supply cars for such great length of time after orders have been given therefor that a large proportion of the live stock marketed was so

much delayed, generally for weeks, and in many instances for months, that they lost seriously in flesh and condition; and after cars were supplied and live stock loaded have moved the same at such low rate of speed and otherwise delayed shipments as to seriously damage such live stock; and

Whereas there are as a whole more stock cars and no greater shipments the past season than heretofore, and it is our belief, from observation and experience, that there has been a reckless indifference of the railroad management, in localities where this disastrous condition has existed, in supplying themselves with stock cars or in utilizing what they have been able to obtain to transport live stock, either permitting the cars to stand idle, as has often been the case, or using them in transporting other traffic at a time when live stock was being held for shipment and fast depreciating in value, thereby producing a wanton destruction of property; and

Whereas there exists no adequate means of compelling the railroads to perform their duty to furnish cars and perform the transportation service in reasonable time, and no means of securing adequate redress for failure of the railroads to perform those duties, where they fail to do so; and

Whereas there is no way by which one railroad can compel its connections to exchange empty cars for loaded cars of live stock, or to receive and forward live stock in the cars in which they are loaded; and

Whereas the refusal of railroads to permit cars to go off their own lines and to deliver cars to other lines has to a great extent impaired the efficiency of the cars which are available, and placed it beyond the power of many railroads to secure cars or a return of cars or exchange of cars and in this way demoralized the railroad service; and

Whereas we believe that if left to themselves the railroads will not better conditions, at least not relieve them, in absence of some law which compels a free exchange and interchange of cars to enable each road to get back empty cars for loaded cars delivered to its connections, and a law which fixes penalties to compel the furnishing of cars to shippers, and the exchange and interchange as between railroads; now, therefore, be it

Resolved, by the American National Live Stock Association, in convention assembled, January 11, 12, and 13, 1910. That we respectfully urge the Congress of the United States to enact suitable legislation compelling the railroads to provide sufficient facilities to perform with dispatch their duties as common carriers in furnishing cars and transporting all freight, including live stock, and to promptly transport same, and to exchange loaded and empty cars, and otherwise to provide sufficient facilities, fixing penalties for failure of such duties, and giving to the shipper the right to recover, in any court of any State or Territory having jurisdiction, his damages and attorney's fees, and in case of failure to furnish cars for shipping live stock, double the damages sustained, and also empowering the Interstate Commerce Commission to enforce penalties for violation of the act, and to make rules and regulations with respect to the time and manner of giving notice for cars, furnishing cars, exchange and interchange of cars, and all needful rules and regulations in the administration of such law, and to compel its observance, and providing rules applicable to the different classes and kind of freight, and the varying circumstances and conditions of shipment; and,

Resolved, That copies of this resolution be promptly printed and sent to each of the western Senators and Congressmen, with the request that the same be read in both the Senate and House of Representatives as the expression of this convention.

RESOLUTION No. 8.

RAILWAY REGULATION.

Whereas, live-stock producers, feeders, dealers, and shippers are vitally interested in the regulation by the Government of railroad rates, regulations, and practices to the end of securing just, reasonable, and nondiscriminatory rates and good and efficient service; and,

Whereas, while the present law and its administration by the Interstate Commerce Commission has been of great and lasting benefit, and has been faithfully and intelligently administered by the Interstate Commerce Commission, yet it falls short of affording the complete remedy and relief to which shippers are entitled, and is deficient in that the power of the Interstate Commerce Commission is not sufficiently broad to enable it to comprehensively consider and correct the evils and practices in transportation and rates; and,

Whereas, Congress is about to undertake the revision of the act to regulate commerce in various particulars herein referred to, and we consider it the right and duty this association owes to the stock industry to place our views before Congress; now, therefore, be it

Resolved, by the American National Live Stock Association, in annual convention assembled at Denver, Colo., January 11, 12, and 13, 1910, That we petition the Congress

of the United States to amend the act to regulate commerce in the following particulars, authorizing the Interstate Commerce Commission:

(1) To institute investigations on its own initiative in the same manner as upon formal complaint, or to broaden a complaint to embrace such subject-matter as to it may seem proper;

(2) To proceed upon its own motion or upon complaint to investigate proposed changes in rates, regulations, and practices, upon notice thereof having been filed with the commission, and to suspend the effective date of such changes for sufficiently reasonable time to complete such investigation;

(3) To establish through routes and through rates wherever it deems the same necessary to secure reasonable rates and service, or to prevent unjust discrimination;

(4) To require stoppage in transit and fix reasonable rates therefor, in such instances as feeding and pasturing of live stock in transit, milling and elevation of grain in transit, the manufacture of animal foods from grain, hay, cotton seed, or other farm products, and the manufacture or treatment of such other freight as is usual by carriers, prescribing regulations and charges therefor;

(5) To regulate terminal and switching charges separately or in connection with the through rates to which they apply, without being required to treat the same separately, and upon the condition that its action can not be set aside, if the entire compensation for the service is reasonable, whether the amount allowed for the special service is below the cost of it or not;

(6) To prescribe rules to be inserted in tariffs, permitting shippers to route their freight over any established route where the same appears reasonable, in order to secure a reasonable service or just and reasonable rates;

(7) To make detailed valuations of the railroads of the United States under a system to be provided for by rules and regulations of the commission;

(8) To have full and exclusive charge of the defense of suits brought against it to enjoin or set aside its orders, and to proceed in the courts to enforce its orders, employing such means as it deems proper to that end, with authority to call upon the Department of Justice to prosecute or defend such suits, and that such sufficient appropriation be made for such expenses of the commission; and, be it further

Resolved (1), That we petition Congress to take no action with respect to any change in the present law in regard to the jurisdiction of the circuit courts of the United States, or in the establishment of any special court to hear and determine suits brought to set aside or enjoin or annul the orders of the commission, or to enforce the same, until the Supreme Court of the United States shall first have determined what that jurisdiction is under the present law, and until experience under the present law shall render such special court necessary;

(2) That Congress so amend the law that parties at interest as complainants before the commission shall have the right to appear by counsel in any suit brought in any court of the United States to set aside, enjoin, or annul any order of the commission, in such case, or any suit to enforce the same, under such rules as may be prescribed by such court;

(3) That in case Congress should enact a law providing for the establishment of a special court to have jurisdiction of suits brought against or by the commission, that such law contain the following provisions:

First. That the judges thereof shall be selected in the same nonpartisan manner as the interstate commerce commissioners.

Second. That the jurisdiction of such court be confined:

1. To questions of law—that is, as to whether the commission, in any matter brought before such court, has acted contrary to law or without authority of law, or denied to anyone his lawful rights, with equal privilege to shippers as well as carriers to present such questions of law to such court for decision;

2. To a determination of the question as to whether the commission's acts or orders violate any property rights of the carriers guaranteed under the Constitution of the United States;

Third. That the power and jurisdiction of the court to set aside any of the orders of the commission shall be limited to such questions of law and constitutional rights; be it further

Resolved, That a copy of these resolutions be submitted to the Senators and Congressmen of the United States, and called to the especial attention of the committees in Congress having before them the consideration of bills pertaining to the subject-matter of these resolutions.

RESOLUTION No. 9.

THE TERMINAL CHARGE AT CHICAGO.

Whereas the Supreme Court of the United States has held that the Interstate Commerce Commission erroneously made an order against the railroads entering Chicago from the Western States, directing that the \$2 per car terminal charge imposed by the railroads on live stock delivered at the Union Stock Yards be reduced to not more than \$1 per car if any charge is imposed; and

Whereas the commission has repeatedly held that considering both the through rates and the terminal charge that the charge against the shipper is unjust to the extent of \$1; and

Whereas the Supreme Court of the United States has in effect held that the unjust part of the charge is embraced in the through rate, and that the commission, if it thought proper to correct the unjust charge, must operate upon the through rate; and

Whereas we believe it to be just and proper and within the jurisdiction of the commission and its duty to make an order reducing the live-stock rates to Chicago on interstate shipments, to prevent the further collection of said unjust charge: Now, therefore, be it

Resolved by the American National Live Stock Association, That a petition be filed by this association with the Interstate Commerce Commission praying that it take such action in the premises as shall be necessary and to make the aforesaid correction in said rates, so as to relieve shippers of paying the same; and the officers and attorney of this association are hereby directed to proceed accordingly to the prosecution of such proceeding as to them shall seem necessary.

RESOLUTION No. 10.

SPEED LIMIT ON LIVE-STOCK TRAINS.

Resolved by the American National Live Stock Association in convention assembled at Denver, January 13, 1910, That in order to secure better service from railroads in the transportation of live stock, we recommend to Congress the enactment of a law to give to the Interstate Commerce Commission the power to prescribe a minimum speed limit for stock trains to suit the conditions in different localities.

The CHAIRMAN. I also have a portion of the report of Mr. William R. Wheeler, manager of the traffic bureau of the Merchants' Exchange of San Francisco, Cal., which may be inserted in the record.

(The extract referred to is as follows:)

The coming session of Congress promises to be one of great importance as regards legislation affecting matters in which this bureau is directly interested. The President in his recent addresses has pointed out the necessity for certain amendments to the interstate-commerce law in order that the latter may be strengthened. Among these is one giving the commission the power to suspend an advance in rates until the reasonableness of such advance shall have been determined by investigation. The action of the transcontinental railroad companies in making arbitrary and material advances in the rates on California products the first of this year and since would make it appear that argument as to the desirability of this measure is unnecessary.

Another measure which should be supported by this bureau is a liberal appropriation to be used by the Interstate Commerce Commission in securing an appraisal of the physical valuation of railway properties throughout the United States. Until this is done the commission must depend pretty largely upon the evidence offered by the railroads naturally interested in securing the highest possible estimates of valuation in order to justify the existence of freight rates against which complaint is directed.

An amendment to the interstate-commerce act which should in all fairness be incorporated therein is one providing that, where it is shown to the satisfaction of the commission that loss to the shipper has been incurred by reason of erroneous quotation of a freight rate by the agent of a railroad company, the commission shall have power to direct that restitution be made.

In order that San Francisco and other seaport cities may receive the full benefits accruing to such location, an amendment to the interstate-commerce act should be adopted, making it unlawful for railroad companies to own, control, or be interested in, either directly or indirectly, or maintain contractual relations or agreements with, competing steamship or steamboat or other lines of vessels. Such ownership or

control is to-day exercised over most of the steamships operating on the Great Lakes and along the Atlantic coast. It is not necessary for us to go beyond our own immediate horizon to find examples of like nature in our ocean and river transportation. It is obvious that the purpose and effect of railroad ownership and control of competing water routes is to maintain rates far above the natural water level, or those which would obtain if competition on the water were permitted to exist. The question of profit to be made by such water lines is to them of secondary consideration, the primary consideration being to protect the rates of a parallel rail route. Therefore there is, on the one hand, no incentive for the operation of such water routes to make profit or to increase business to a profitable volume by reducing rates of the water line to a reasonable figure, and, on the other hand, the existence of such railroad-owned line is a constant menace to a private owner, who would otherwise put on steamships to be operated in good faith and at rates which would attract business from the rails. Until the rates of water carriers are placed at a true water level by being based upon the cost of water carriage, instead of upon the rates charged by the railroads, San Francisco can not come into the full enjoyment and benefits of that heritage which is hers.

San Francisco, in common with other Pacific coast seaports, is expecting great benefits from the completion of the Panama Canal, chief among which is expeditious and regular steamship service between San Francisco and the Atlantic seaboard at true sea-level rates, which will not only have the effect of reducing the cost of distribution to the California producer, but will at the same time lower the cost of many of the articles which he consumes, thus, in the last analysis, materially increasing his purchasing power. Will such benefits be realized if the railway interests are permitted to operate steamships between, say, New York and San Francisco, occupying the field to the exclusion of independent owners, and maintaining artificially high rates for the protection of the transcontinental railroads? No independent owner would dare to engage in competition with such a line, no matter how invitingly high the rates might be, well knowing that rates would be dropped to an unprofitable figure upon the establishment of a new line, to his ultimate financial undoing. This is not a theory, as every steamship owner will attest. Experience of the past is the prophecy for the future.

Profitable export trade can be built up only on a profitable home market. Likewise the free and untrammelled development of coastwise traffic to the fullness of its possibilities should be the first step in line with the establishment of a foreign-going American merchant marine.

Furthermore, any mail-subsidy act should contain the proviso that no benefits under the act shall accrue to any steamship company enjoying exclusive privileges or preferential arrangements as to division of earnings, service, dispatch, transfer, or other facilities at the hands of connecting American railroads. Unless such a proviso is incorporated, private owners will not be encouraged by subsidies to establish trans-Pacific or Central and South American steamship lines, necessarily obtaining and distributing a large part of their traffic through the transcontinental railways, while the latter are permitted to give preferences of various nature to lines of steamships owned or controlled by themselves. While it is both desirable and proper that existing Pacific Ocean lines should enjoy to the fullest extent any subsidies which may be voted by Congress, the act should be so framed that in its practical operation they will not become the sole beneficiaries. In other words, every American shipowner should be guaranteed a "square deal" and equal opportunity to avail himself of the benefits of the subsidy.

The CHAIRMAN. Also a letter from the Merchants' Association of New York, by Edward D. Page, chairman of the committee on commercial law.

(The letter referred to is as follows:)

NEW YORK, February 5, 1910.

CHAIRMAN COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
House of Representatives, Washington, D. C.

DEAR SIR: I am instructed by the directors of the Merchants' Association to write you that after full consideration of House bill 17267, relating to bills of lading, introduced on January 7 by Mr. Stevens, that the Merchants' Association approves of this bill, with the following exceptions:

First, that the words "carrier or" in the first lines of sections 3, 5, and 7 be stricken out.

The effect of this is to make the carrier penally liable. It is our belief that it is impossible to make the carrier penally liable and that this clause if insisted on will bring about a very serious reduction of the facilities now afforded to merchants and

manufacturers in the shipment of goods. It will be quite sufficient to make the persons guilty of the crime penally liable, and the few cases in which the carrier himself is the person who commits the crime may be disregarded.

Second, that the penalties for the misdemeanors described in the above-named clause be reduced to a fine of not exceeding \$500 or imprisonment not exceeding one year, or both.

It is our opinion that with the higher fines now prescribed by the bill juries would not convict the class of persons who are likely to commit the same.

We ask that this be received by your committee and spread upon your records.

Yours, truly,

MERCHANTS ASSOCIATION OF NEW YORK,
By EDWARD D. PAGE,
Chairman Committee on Commercial Law.

The CHAIRMAN. Also a letter from William A. Glasgow, jr., of Philadelphia.

(The letter above referred to is as follows:)

[Law offices William A. Glasgow, jr., 412-417 Real Estate Trust Building, Broad and Chestnut streets, Philadelphia.]

FEBRUARY 8, 1910.

Hon. JAMES R. MANN,

*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

MY DEAR SIR: I am informed that several bills have been introduced in Congress, the purpose and effect of which would be to amend the act to regulate commerce, and I have before me one of such bills (H. R. 17536), having been introduced by Mr. Townsend, and referred to the Committee on Interstate and Foreign Commerce of the House of Representatives, the title of which is "to create an interstate commerce court," and to amend the act to regulate commerce approved February 4, 1887, as amended, etc.

In reading this bill, there are several suggestions which occur to me, and which I respectfully desire to call to your attention.

First. The court provided for in this bill is to be composed of five circuit judges of the United States, to be designated by the Chief Justice of the United States, and the longest period of service on the interstate commerce court provided therein for any one judge is five years, and at first only one judge can sit for that length of time. It is evident from section 4 of this bill that it is intended that the judges of this court are to be constantly changing, and each judge is to serve on the court for a very short period.

I have been led to conclude that the justification for such a court could only be that there would be a tribunal created, fitted by experience and constant acquaintance with transportation and traffic questions to build up harmonious and reasonable rules of construction of the act to regulate commerce, so that both shippers and carriers may be assured of fair and intelligent treatment, and that uniformity may, to some extent, be brought out of the present divergent views, entertained in the many circuit courts of the United States. I suggest to you that this result can not be attained by the creation of a court presided over by judges who are constantly changing, and each of whom sits upon the court for a short period, and the frequent calling to service thereon of circuit judges whom, with perfect respect I may say, have had no experience as to the questions to be passed upon.

My suggestion is that if such a court is to be provided for, the judges thereof should be selected from those members of the profession or present judges who have had experience upon questions on which the court will have to pass, and they should serve permanently in this court.

Second. Paragraph 2 of section 1 of the bill provides that the new court shall have jurisdiction of "cases brought to enjoin, set aside, annul, or suspend any order or requirement of the Interstate Commerce Commission."

Section 3 provides: "That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the court of commerce against the United States."

The language of the two sections above would seem to authorize the court to enjoin "any order of the Interstate Commerce Commission" which the court might think inequitable or unjust or which it might not approve on any other ground.

Beginning with the case of Abilene Cotton Oil Company (204 U. S.), the Supreme Court has been working out a harmonious and well-considered construction of the act

to regulate commerce, so far as the jurisdiction of the courts and the Interstate Commerce Commission is concerned. The recent cases in that court of Illinois Central R. R. Co. v. Interstate Commerce Commission and Baltimore and Ohio R. R. Co. v. Pitcairn Coal Co. et al. (not yet reported) carry one step further the Supreme Court's views as to the relative jurisdictions of the courts and the commission, and practically declare that the courts have no right to interfere with the exercise by the commission of the powers conferred upon it by Congress, so long as the commission does not overstep the limits of its jurisdiction. That there may be no confusion brought about by the proposed act creating the interstate commerce court, I would suggest that it be distinctly declared that the jurisdiction of the court shall not extend beyond the present jurisdiction of the circuit courts of the United States, and that the court should not exercise powers beyond such as the circuit courts now exercise.

Third. By section 4 of the bill: "All cases and proceedings in the court of commerce which, but for this act, would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States."

Section 5 provides that an assistant attorney-general, under the supervision and control of the Attorney-General, shall have charge of the Government's interests in all cases and proceedings in the court of commerce and in the Supreme Court of the United States.

The bill further provides: "The Interstate Commerce Commission and its attorneys shall take no part in the conduct of any such litigation."

I suggest to you that the result of the enactment of these two sections in this form would be unfortunate for several reasons.

First. A shipper may be vitally interested in the question before the court, and may have been thoroughly familiar with the facts of the case or proceeding from the beginning, and may desire to have his counsel appear and present his views, but under these two sections I think it very doubtful whether the court could hear the counsel of a shipper, and he would have to sit back and hear the case, absolutely vital to his interests, presented by an Assistant Attorney-General, whose experience with the matters involved is necessarily limited. There should certainly be some provision authorizing anyone interested in the result of the litigation to appear in the case, within the discretion of the court.

Second. The Interstate Commerce Commission is composed of experts, as the Supreme Court has said, and is a permanent body, its organization being provided for the purpose of enforcing a systematic observance of the act to regulate commerce.

The Assistant Attorneys-General have changed frequently with the administration under which they serve, and, indeed, sometimes more frequently. I have known many of them of great earnestness, ability, and learning, and it is no want of respect for me to suggest that their efficiency in working out an harmonious and well-considered enforcement of the act to regulate commerce will be greatly hampered by the brevity of their terms of service.

The shipper is always at a disadvantage in a contest with counsel for the carriers, by reason of the fact that year in and year out the latter are working toward a construction of the act which will be useful to the carriers, and if the commission are to be forbidden from taking any part in the enforcement in the courts of the act, then the shipper will lose the assistance of a body which year in and year out have before them the enforcement of the provisions of the act to regulate commerce. I would earnestly suggest that in important cases the commission should have the right, if it so desires, to appear and present its views, or, if in its opinion necessary, to institute cases or proceedings before the court.

Fourth: Under the bill above referred to, and, indeed, under the present act, the carriers can have the findings of the commission reviewed by the courts, but a shipper has no such right, and I submit that the shipper should be put upon the same basis in this regard as the carrier, and the right to review the finding of the commission should apply to either party.

Fifth: Section 5 forbids a railroad corporation to hereafter acquire the stock of "any railroad corporation which competes with" it, and I submit that this should be carried further, and require railroad corporations which have acquired stock in such railroad corporations to dispose of the same. The effect of such ownership can be clearly seen in the proposed rates of carriers on bituminous coal to the Lakes, which are now held up by injunctions, and if such stock ownership continues will no doubt be reflected in the tidewater rate on coal.

Sixth: I suggest that section 9, page 20, of the bill should be amended by inserting after the word "reasonable," in line 9, the following: "Which said reasonable charge and allowance the said owner shall be entitled to recover from the carrier or carriers transporting the property aforesaid." As at present the act leaves it optional with the

carrier whether to pay the owner anything for services rendered "connected with such transportation," and I suggest that if the owner renders service which the carrier should perform in transportation and the carrier avails itself thereof, then the carrier should pay the shipper therefor, but not a greater amount than is reasonable.

Perhaps there are other suggestions as to this bill which would be pertinent, but I shall not further tax your patience, and I submit the above views in the hope that you may find something therein which may aid you in the difficult problems now presented for your consideration.

Very truly,

WM. A. GLASGOW.

The CHAIRMAN. Also the decision of the United States court for the eastern district of Pennsylvania in the case of Philadelphia and Reading Railroad Company *v.* Interstate Commerce Commission, and the opinion of the circuit court of the United States for the southern district of California in the case of the Arlington Heights Fruit Company et al. *v.* The Southern Pacific Company et al. Both of these contain more or less information, and may be inserted in the record. (The above-mentioned decisions are as follows:)

PHILADELPHIA AND READING RAILWAY COMPANY ET AL.

v.

INTERSTATE COMMERCE COMMISSION.

[In the United States Circuit Court for the Eastern District of Pennsylvania. Decided November 22, 1909.]

1. Complainants filed a bill to enjoin the Interstate Commerce Commission from enforcing its order establishing a tariff rate on big-vein coal carried from the Georges Creek and Elk River regions in Maryland to coast points in other States. Upon demurrer setting up that the bill showed that the commission had taken all the steps required by the act to regulate commerce, that the conclusion of the commission was not arbitrary or reached through fraud, that the order of the commission is lawfully issuable, and that its act in this case is final and conclusive and not reviewable by the courts; *Held*, That upon the circumstances disclosed by the record the demurrer should be sustained and the bill dismissed.
2. The fixing of rates as an incident to the regulation of commerce being a non-judicial function, it follows that when the legislative branch has itself acted therein, or by proper delegation of its powers, has acted through the commission, such action, provided no legal, constitutional, or natural right has been violated, is not to be suspended or vacated by a court.
3. When the question of suspending or setting aside an order of the commission comes before a court under the act to regulate commerce the question is one of law, namely, whether the commission transcended its power or exercised such power without due regard to law. The judicial department should not require the commission to answer a bill in equity the purpose of which is to secure a decree which in effect annuls the order, unless the bill makes a clear prima facie case that the facts adduced before the commission could not possibly support the order, or that the complainant's legal or constitutional rights have been violated.
4. Complainants contended that the rates on big-vein coal when consigned for transshipment by vessel were held unreasonable and unjustly discriminatory by the commission wholly upon the ground that by reason of the higher cost of production of the big-vein coal it could not, when so consigned, successfully compete with the coals of the Pocahontas and New River districts; *Held*, That the conclusion stated above is not warranted from the pleadings, but that the record shows that the commission based its action on other and different grounds.
5. While a reduction by complainants of their rates to the Pennsylvania and West Virginia fields was a proper business step, since otherwise they would have had no traffic from those fields, yet in the face of such reduction of rates to a part of the group complainants had no legal right to retain the higher rate on the remainder of the group. The fact that the latter did not need the reduction to meet competition was no legal justification to warrant its retention.

6. Putting big-vein coal on an equality with all the other coals in this group was properly based by the commission upon the all-sufficient ground of dissimilarity of charge for similarity of service; but wholly apart from the legal grounds there was a practical commercial reason for relief in the increased cost of mining incident to the exhaustion of a very thick vein. An examination of this case in all its bearings satisfies the court not only that the commission did not act unlawfully, but that it was constrained to order the enforcement of a uniform rate in the whole group in accordance with the provisions of section 15 of the act.
7. The Pennsylvania Railroad Company declared that as its lines enter the Georges Creek Basin only and do not enter the West Virginia and Pennsylvania fields, the order of the commission will subject it to pains and penalties should the Baltimore and Ohio Railroad Company hereafter change its rates from the West Virginia and Pennsylvania fields; *Held*, That such danger is too remote to invoke injunctive relief. If any such construction is placed upon the order, there will be opportunity for that road to apply to the commission for modification of the order, or to this court for injunctive relief.

Charles Heebner, Hugh L. Bond, jr., and George Stuart Patterson, for complainants.

J. Whitaker Thompson, United States attorney, and Luther M. Walter, special assistant United States attorney, for defendant.

Before GRAY, BUFFINGTON, and LANNING, Circuit Judges.

OPINION OF THE COURT.

BUFFINGTON, Circuit Judge, delivering the opinion of the court:

This is a bill brought by the Baltimore and Ohio Railroad Company and a number of other railroad companies against the Interstate Commerce Commission to enjoin the latter from enforcing its order of June 7, 1909, whereby it established a tariff rate on big-vein coal carried from the Georges Creek and Elk River regions in Maryland to coast points in other States. To this bill the commission demurred. The questions pertinent to our disposition of the case may be considered under the first and fifth grounds of demurrer, which are:

"I. That it appears from the face of said bill that all of the proceedings required by statute to be taken were duly taken and had; that after a formal complaint and answer a full hearing was had; that the commission arrived at its conclusion after being fully advised; that the order complained of was duly given, made, rendered, and served; and that the conclusion of said commission was not arbitrary or reached through fraud; and therefore the act of the defendant is final and conclusive and not reviewable by the courts."

"V. That it appears from the face of the bill of complaint that the order of the commission is lawfully issuable under the act to regulate commerce."

By section 15 of the interstate commerce law, as amended by the act of June 29, 1906 (34 Stat., 584), Congress empowered the commission, if it "shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act * * * are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial * * * to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged."

The jurisdiction of the court in this case is invoked under section 15, which provides that the commission's order may "be suspended or set aside by a court of competent jurisdiction," and section 16, which designates the particular court to exercise jurisdiction and provides that "jurisdiction to hear and determine such suits is hereby vested." Now, the power conferred being to suspend or set aside the commission's order, the question arises, In what way and to what extent will this court exercise its powers in order "to hear and determine such suits?" Without referring to that general jurisdiction which federal courts, within constitutional limits, necessarily have to prevent infractions of the law, we note that the jurisdiction here invoked is conferred by the statute above quoted, and its purpose is to submit the action of an executive branch of the Government to the judgment of the court, that it may hear and determine such suit with a view to suspending or setting aside that action. On the argument counsel did not question the right of the commission under the act to fix maximum rates, provided they were not confiscatory.

Now, manifestly, courts have no power to fix rates. *Maximum Rate cases* (167 U. S., 499); *Gordon v. United States* (117 U. S., 697); *Reagan v. Farmers' Loan & Trust Co.* (154 U. S., 397). No such authority is conferred on federal courts by the Constitution, and by its grant to Congress of the power "to regulate commerce * * * among the several States," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," the exercise of power to regulate commerce is restricted to that agency. The fixing of rates as an incident to the regulation of commerce, being a nonjudicial function, it follows that when the legislative branch has itself acted therein, or by proper delegation of its powers has acted through the executive branch, such action, provided no legal, constitutional, or natural right has been violated, is not to be suspended or vacated by a court.

In pursuance of the powers above referred to the commission has made such an order in the premises, and that order is now in force unless it "be suspended or set aside by a court of competent jurisdiction." Now, on what principles should this court proceed in suspending or setting aside an act of an independent branch of the Government? Manifestly, the act is one of those administrative acts of the executive branch of the Government, duly empowered thereto by the legislative branch, that falls within that category of which Mr. Justice Harlan spoke in the *Union Bridge case* (204 U. S., 386):

"If the principle for which the defendant contends received our approval the conclusion could not be avoided that executive officers in all departments, in carrying out the will of Congress as expressed in statutes enacted by it, have, from the foundation of the National Government, exercised and are now exercising powers, as to mere details, that are strictly legislative or judicial in their nature. This will be apparent from an examination of the various statutes that confer authority upon executive departments in respect of the enforcement of the laws of the United States. Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the state of things upon which the enforcement of its enactment depends would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business."

It is therefore apparent that when the question of suspending or setting aside an executive act comes before a court under such statute the question is one of law, namely, whether the executive transcended its power or exercised such power without due regard to law. If, for example, there was a failure to comply with statutory requisites of notice, or to afford a statutory hearing, or the action taken was confiscatory—these are all elements a court might consider, and in exercising such jurisdiction inquire into the facts to ascertain the real subject involved as throwing light upon the lawful or unlawful character of the order under review. The principles affecting this exercise of jurisdiction are clearly set forth by Judge Lanning in *Appleby v. Cluss* (160 Fed. Rep., 984), where, on a bill to enjoin execution of a fraud order made by the Postmaster-General, he said:

"A due regard for an order of an executive department of the Government demands that the judicial department shall not require the head of that executive department, or any of his subordinate officials, to answer a bill in equity, the purpose of which is to secure a decree which in effect annuls the order, unless the bill makes a clear prima facie case that the facts adduced before the executive department could not possibly support the order or that the complainant's legal or constitutional rights have been violated."

This view is in accord with the principles set forth in *San Diego v. National City* (174 U. S., 739), and cases cited, viz: *Spring Valley v. San Francisco* (82 Cal., 286); *Chicago v. Wellman* (143 U. S., 339); *Reagan v. Farmers' Loan* (154 U. S., 362); *Smyth v. Ames* (169 U. S., 466); *Henderson v. Henderson* (173 U. S., 592); *Missouri Co. v. Interstate Commerce Commission* (164 Fed. Rep., 645); *Knoxville Water case* (212 U. S., 1); *Consolidated Gas case* (212 U. S., 19).

In the present case all the provisions of the statute were observed and the parties concerned were duly notified and fully heard. It is, however, averred in the bill that the commission "based its finding that the rates on the big-vein coal when consigned over the lines of your orators to Baltimore, Wilmington, and Philadelphia for transshipment by vessel were unreasonable and unjustly discriminatory wholly upon the ground that by reason of the higher cost of production of the said big-vein coal it could not, when so consigned, successfully compete with the coals of the Pocahontas and New River districts."

Assuming for present purposes that if this conclusion were correct, the commission could not legally base an order on that ground, analysis shows not only that the pleadings have not brought before us all the facts and proofs on which the commission acted, but that those which are before us show that the conclusion stated above is not warranted and that the commission based its action on other and different grounds. To

that end we address ourselves to the facts. The rate here in question applies to the transportation of coal mined from the big vein in the Georges Creek and Elk Garden region, which we will hereafter refer to as the Georges Creek Basin. For the purpose of rating, these two fields and the Somerset (which the commission refers to as the Pennsylvania) field, to the north and west, and the Austen-Newburg (which the commission refers to as the West Virginia) field, to the west, were included in one group and had been so grouped for ten years. Thus, in their report in the present case and annexed to the bill, the commission says:

"Rates from Georges Creek Basin and from the Pennsylvania and West Virginia fields are the same when the coal is destined for track delivery on the lines of the principal defendants; that is to say, coal from mines in the Pennsylvania and West Virginia fields takes the same rate as coal from the Georges Creek Basin when it is destined for local consumption at tide-water points. This is still the relation of the rates on coal from the three fields when destined to local points on the Baltimore and Ohio and Western Maryland. The three fields have been thus grouped for ten years or more. Moreover, Philadelphia, Wilmington, and Baltimore and intermediate points, at the other end of the haul, have for a like period of time also been grouped together under one rate for track delivery."

On all the coal carried from the mines in this group for track delivery to Philadelphia, Wilmington, and Baltimore the rate was \$1.60 per ton, and for over-pier delivery for shipment inside the Chesapeake and Delaware capes the rate was \$1.35 per ton. When it came, however, to over-pier deliveries for shipment beyond the capes the Georges Creek Basin coals were charged a materially higher rate than the West Virginia and Pennsylvania fields, although all were in the same group and the Georges Creek had a shorter and down-grade haul as compared with the longer and up-mountain grade to Cumberland in the case of the West Virginia and Pennsylvania fields. Now, the effect of the present order is to put all the coal from the group on an exact equality of \$1.60 per ton for track deliveries, \$1.35 for over-pier deliveries for shipment inside the capes, and \$1.18 for over-pier deliveries at Baltimore and \$1.25 at Philadelphia for shipment outside the capes.

The reason why shippers submitted to these varying prior rates in the same grouping is quite plain. The coal in the Pennsylvania and West Virginia fields of the group was ordinary bituminous coal and was found in small veins, while that in the Georges Creek Basin came from the "big vein," a stratum of such unusual thickness that it was mined at far less cost than the thinner veins, while its high grade and peculiar characteristics gave it a market of its own with which no other coal competed. Of this condition the commission say in their report:

"The defendants, the Baltimore and Ohio and the Western Maryland, reach three coal districts, which, for convenience, are referred to in the report as the Pennsylvania, West Virginia, and Georges Creek fields. Under an adjustment made in 1900, which was then entirely satisfactory to all concerned, these three fields were grouped together and took the same rate on coal destined for track delivery at points on the lines of those two roads. At that time the output of Georges Creek Basin consisted of big-vein coal only, and it was concededly superior in quality to the coals mined in the other two districts. * * * The record showed that there was no competition from outside coal fields at local points on those lines. But when the coal went over the piers at Philadelphia, Baltimore, and Curtis Bay, for destination inside and outside the two capes, it met the more or less severe competition of water-borne coal from mines on the Chesapeake and Ohio, Norfolk and Western, Pennsylvania, and the New York Central railroads. It was necessary, therefore, to shrink the rates in order to enable the coal from these three fields to enter those markets. Because, however, of the superior quality of Georges Creek coal, and of its ability more easily to meet such competition, the rates on that coal were shrunk less than the rates on the coals from the Pennsylvania and West Virginia fields. The result of the adjustment was that, as compared with the rates from these fields, there was a differential of 10 cents a ton against Georges Creek coal when water borne to competitive points inside the capes, and of 15 cents a ton when destined to points outside the capes."

Now, to us it is clear that while a reduction by the railroad of their rates to the Pennsylvania and West Virginia fields was a proper business step, since otherwise the carrier would have had no traffic from those fields, yet it is equally clear that in the face of such reduction of rates to a part of the group the railroad had no legal right to retain the higher rate on the remainder of the group. The fact that the latter did not need the reduction to meet competition was no legal justification to warrant its retention. Speaking in the recent case of *The Pennsylvania Railroad Company v. International Coal Mining Company* (— Fed. Rep., —) of an attempt to justify different rates on coal hauled from the same grouping because one was "contract coal" and the other "free coal," we said:

"We are thus brought face to face with the question whether the existence of these contracts created a dissimilarity of circumstance and condition under which the service of carriage was rendered. To us the reading of the act is clear. The act contemplates 'compensation for any service rendered.' Now, it is manifest that 'service rendered' is the physical service of carriage. Elsewhere it is spoken of as 'a like and contemporaneous service;' such service is a 'service in the transportation;' it is a 'service in the transportation of a like kind of traffic;' and it is a service in transportation 'under substantially similar circumstances and conditions.' The law having in view the carriage of freight and equal rates to all, it is clear to us that the words 'substantially similar circumstances and conditions,' as used in this subsection, are those which affect transportation, and not those which involve personal conditions or contractual relations between one particular shipper and the carrier, but are such things only as are circumstances of carriage generally. In *Wight v. United States* (167 U. S., 513) it was sought to differentiate the service performed by the different terminal facilities of the two shippers at their respective warehouses, but the court held that these were not the circumstances and conditions of the act, but that the circumstances and conditions the act contemplated were those which affected the actual carriage of the freight, using this language: 'It was the purpose of this act to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor.' And that this phrase, 'circumstances of carriage,' was a carefully chosen one, limiting the circumstances to such as affected haulage of freight, is shown in *Interstate Com. Com. v. Alabama* (168 U. S., 166), where, referring to *Wight v. United States* (supra), the court say: 'We there held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.' It follows, therefore, that if these circumstances and conditions of section 2 are those which affect haulage and do not include competition between rival routes, they do not include individual elements affecting individual shippers. The purpose of the section is to afford identity of rate for substantial identity of transportation service, and anything that does not aid in determining what is such substantial identity of haulage does not aid in the application of the section."

It will thus be seen that while the nonuniform rate was continued as against Georges Creek Basin, there was no legal justification for such continuance. Later this matter came before the commission in *Georges Creek Basin Coal Company v. B. & O. R. R. Co.* (14 I. C. C., 127), and of that case the present report says:

"In 1902, after this relation of rates as between the three fields had been in existence for about two years, the operators in Georges Creek Basin commenced for the first time to mine small-vein coal, which, as stated, is inferior in quality to the big-vein coal, and is substantially the same as the coals mined in the Pennsylvania and West Virginia fields. But as the defendants in that proceeding made no distinction in their rates between big-vein and small-vein coal, the latter, with differentials of 10 and 15 cents a ton against it, could not move by water in competition with coal of the same quality from the other two fields; the record in fact showed that from the time the small-vein mines were opened in 1902 to the time when the hearing of that complaint was had, not a single cargo of small-vein coal was shipped to competitive points either inside or outside the capes, although coal in large volume had reached those destinations from the other two fields. It was under these circumstances that the original complaint was filed asking for relief on behalf of the small-vein operators. The complainants contended that the small-vein coal, with differentials against it, could not successfully enter the markets for water-borne coal. No attack was made in the complaint on the inherent reasonableness of the rates from Georges Creek Basin to tide-water points, but only upon the reasonableness of those rates as applied to small-vein coal, when compared with the rates accorded to operators in the Pennsylvania and West Virginia fields. No complaint was made at that time either by or on behalf of the producers of big-vein coal in Georges Creek Basin. On the contrary, the witnesses who testified gave us to understand that the big-vein coal, because of its superior quality, had been able to hold its own under the existing rates in competition with the coals from the other fields, and therefore required no reduction in order to retain its markets. We were, in fact, advised that the big-vein coal had been so well and favorably known that it practically met with no competition at all from other bituminous coals, except possibly from the New River coal on the Chesapeake and Ohio and the Pocahontas coal on the Norfolk and Western. Although it was quite unusual, as we then explained, to have two rates on coal from one mining district, nevertheless as the big-vein coal was not shown to require any reduction in rates, but was said to be moving freely in competition with the other coals, and as the issue made on the complaint was directed against the rates on small-vein coal only, we concluded, without committing ourselves

to the general propriety of two rates from one district, and basing our action strictly on the record before us, to order a reduction in rates on small-vein coal to tide-water points, so as to permit that coal to meet the competition of coals of like quality from the Pennsylvania and West Virginia fields. We thereupon entered such an order without disturbing the rates on big-vein coal, and the lower rates on small-vein coal were subsequently published by the defendants in that complaint. But we said in explanation of our exact attitude toward the whole situation that 'if the results are such as to demonstrate that the two rates can not be successfully maintained without giving rise to discriminations and unlawful practices, the question will then arise whether the lower rate should not be made effective from all mines in the basin, whether producing big-vein or small-vein coal. And it may be well also now to emphasize the fact that this disposition of the matter is not to be understood as an approval of such a rate adjustment, either for general application or as controlling our action in the future, in case complaint should be made of the rate on water-borne coal from the big-vein mines. We are to be understood only as giving recognition, on the record before us, to the right of the small-vein operators to have a rate that will enable them to move their output to the consuming markets and give them a reasonable opportunity to compete with similar coal from adjacent fields moving through Cumberland to tide water for destinations inside and outside the capes.' "

Accordingly the rate on small-vein coal from Georges Creek Basin was made uniform with that from the Pennsylvania and West Virginia fields. Subsequently the proceeding in the present case was brought on behalf of companies in the Georges Creek Basin engaged in the mining of both big-vein and small-vein coal, and two forms of relief were sought, viz: In the case of the big-vein coal:

"That the differentials of 10 and 15 cents a ton against the big-vein coal constitute an undue discrimination that ought to be removed, and that the big-vein coal ought to be placed on a parity with the small-vein coal and with the coals from the Pennsylvania and West Virginia fields."

And in the case of both the big-vein and the small-vein coals of Georges Creek Basin, that they be removed from their grouping with the Pennsylvania and West Virginia fields, viz:

"2. That as the Georges Creek Basin is nearer to tide water than the Pennsylvania and West Virginia fields and the haul less expensive, both on account of the shorter mileage and on account of the more favorable character of the grades, the rates from these mines to all points on the lines of the defendants should be less than the rates from the more distant western mines with which the mines of the Georges Creek Basin are now grouped for rate-making railroads."

The relief by way of regrouping was denied, and while that question is not before us it is helpful to an understanding of the present case to note that the commission say:

"While we are not disposed to criticise the desire on the part of the operators at Georges Creek to secure better rates than their competitors in the other two fields enjoy, we are not inclined, on the other hand, to yield to their demand. There are many coal groups that are much more extensive than this group. Moreover, it has been our understanding that group rates, particularly on such a commodity as coal, are advantageous to the public, the carriers, and the mine owners alike. The disrupting of this group of coal-producing districts and coal-consuming destinations after it has been in effect for so many years could not fail to lead to a widespread confusion in coal rates, and we see nothing in the record to justify such an order."

As to the other relief sought, viz, putting big-vein coal on an equality with all the other coals in this group, the report shows not only that there was the all-sufficient ground we have noted above, viz., that there was a dissimilarity of charge for similarity of service, but that wholly apart from the legal ground there was a practical commercial reason for relief in the increased cost of mining due to drawing pillars, greater water troubles, longer haulage, lumbering, etc., incident to the exhaustion of a very thick vein. The report then states:

"The report of the commission in the previous proceeding indicates the action that might fairly be anticipated whenever the question of the reasonableness of the rates on big-vein coal, when water borne to points inside or outside the capes, was properly presented to us accompanied by adequate proof that the differentials against it operated to its disadvantage. Such a complaint is now before us, and the testimony makes it quite clear that the reduction in the rates on small-vein coal required under our order in the previous case ought now to be extended to the rates on big-vein coal."

Indeed, an examination of this case in all its bearings satisfies us not only that the commission did not act unlawfully, but was constrained to order the enforcement of a uniform rate in the whole group in accordance with the provisions above quoted from section 15 of the act.

We are therefore of opinion the demurrer should be sustained and the bill dismissed. It remains to consider an argument peculiar to the Pennsylvania Railroad advanced at the hearing. It was in effect said that as the lines of that railroad enter the Georges Creek Basin only and do not enter the West Virginia and Pennsylvania fields the order will subject it to pains and penalties should the Baltimore and Ohio hereafter change its rates from the West Virginia and Pennsylvania fields. It suffices to say that such danger is too remote to invoke injunctive relief, and that if any such construction is placed upon the order as is now suggested there will be opportunity to that road to apply to the commission for modification of the order or to this court for injunctive relief.

ARLINGTON HEIGHTS FRUIT COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

[In the circuit court of the United States for the southern district of California November 22, 1909.]

1. Defendants propose to increase their rates for the transportation of lemons from points in California to eastern markets from \$1 to \$1.15 per 100 pounds. Upon application of complainants for a temporary injunction restraining defendants from collecting the proposed increase in rates until a hearing is had upon the merits by the Interstate Commerce Commission: *Held*, That for the present the equity of keeping the present rate appears to be with the complainants until the subject can be investigated by the commission, and that temporary injunction should be issued upon complainants giving bond to protect the defendants in case the commission decides that the increase in rates was reasonable.
2. The final determination as to the reasonableness of the rates rests with the Interstate Commerce Commission, and there is no disposition on the part of the court to intrude upon the jurisdiction of that tribunal.
3. In reaching conclusions upon questions presented in an application for temporary injunction such as this it is the duty of the court to balance the equities between the parties and ascertain which of them will suffer the greater detriment or inconvenience by the action of the court. Facts of this case considered and conclusion arrived at that the equities of this case lie with the complainants.
4. It seems that the lemon growers understood that the present rate was to be made permanent and enlarged the area of their orchards and increased their business upon this faith and basis as factor of expense, and as nothing has occurred since to justify defendants in increasing the freight rate, the status quo should be maintained for the protection of the lemon growers until a hearing is had upon the merits by the proper authority.
5. Increase of the rates on lemons upon the facts presented by the record does not appear to be justified by the recent increase in customs duties on lemons prescribed by the Payne-Aldrich Tariff Act.
6. The policy of imposing protective duties is for the benefit of the producer and to encourage home productions and home manufactures, and not to increase the cost of railroad transportation.

Joseph H. Call, Asa F. Call, and Levy Mayer for complainants.

J. W. McKinley for Southern Pacific Company.

T. J. Norton and U. T. Clotfelter for Atchison, Topeka & Santa Fe Railway Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

OPINION OF THE COURT.

MORROW, Circuit Judge (orally):

The court is not required at this stage of the proceedings to determine whether the proposed rate of \$1.15 per 100 pounds for the transportation of lemons to the New York market is just and reasonable or unjust and unreasonable. Indeed, the final determination of that question rests with the Interstate Commerce Commission, and there is no disposition on the part of the court to intrude upon the jurisdiction of that tribunal.

The present application is for a temporary injunction that will preserve the status quo until a hearing is had upon the merits by the proper authority, the status quo being a charge of \$1 per 100 pounds for the transportation of lemons from California to the New York market. What the court is required to do now is to determine from the evidence submitted whether there is a reasonable probability that the complainants will be able to maintain the case set forth in the bill and establish the fact that

the proposed increased rate of \$1.15 per 100 pounds will be unjust and unreasonable; and whether pending such a hearing upon the merits the complainants will suffer an irreparable injury. In reaching conclusions upon these questions it is also the duty of the court to balance the equities between the parties and ascertain which of them will suffer the greater detriment or inconvenience by the action of the court. If the balance of detriment or inconvenience, in the event the temporary injunction is refused, is against the complainants, then the injunction will be granted. But if, on the other hand, the balance of detriment or inconvenience is against the defendants, in the event the temporary injunction should issue, then it should be refused. If in the present case the temporary injunction is issued, the defendants will be denied the right to collect the increased rate of 15 cents per 100 pounds until the Interstate Commerce Commission has determined whether such increased rate is just and reasonable or unjust and unreasonable, but in the meantime the defendants will be fully secured in a bond to indemnify them for the difference between the proposed rate and the rate which they may collect.

Now, how will it be with the complainants if the temporary injunction is refused? They must pay the increased rate, which it is estimated will amount to about \$250,000 in one year. If it is finally determined that this rate is unjust and unreasonable they may recover of the defendants the amount so exacted. But what will be their situation or condition pending this determination? It appears from the evidence that the lemon growers can not pay the increased rate and market their crops in the eastern markets at a profit. They must go out of business if required to pay the increased rate. They will be compelled to destroy their lemon trees and put their land to other uses. This is a detriment and inconvenience in addition to, or rather aside from, the difference in rate. If the equities of the parties related only to the difference in rate they would be equally balanced and the temporary injunction would be refused. But there is evidence before the court that the equities are not so balanced. The complainants will suffer an irreparable injury by the increased rate not measured by the difference between that and the present rate, and this fact clearly balances the equities in favor of the complainants. Moreover, there is evidence that for some years prior to November, 1904, the present rate of \$1 per 100 pounds was an emergency rate established by the carriers to enable the shippers to meet the special conditions of the season and of the eastern market. But in November, 1904, after some negotiations between the parties, the rate was made a permanent rate, or at least the lemon growers so understood it, and thereupon, having faith that such permanent rate would be continued, they have enlarged the area of their orchards and increased their business upon that basis of this factor of expense. This rate has now been continued for five years.

The defendants deny that they ever gave the complainants to understand that the rate of \$1 per 100 pounds was to be a permanent rate, but I think the evidence furnished by the bill and supported by the affidavits satisfactorily establishes the fact that the complainants as a result of their negotiations with the defendants were given to understand that the rate of \$1 per 100 pounds would be a permanent rate upon which they could go on and develop this industry, and the fact that it has been continued for five years indicates that the rate was to be permanent.

Now, what has occurred since November, 1904, to justify the defendants in increasing the freight rate to \$1.15 per 100 pounds? There is some evidence that there has been an increase in the cost of labor, but this fact applies with equal force to the business of both parties. The entire cost of transportation is not, in fact, any greater. The services rendered by the carriers do not appear to be any more expensive as a whole than they were in 1904, if indeed they are as expensive now as they were then. Where, then, is the change of condition? Why the increased rate? It appears to be confined exclusively to the legislation by Congress respecting the tariff.

By the Dingley tariff act of July 24, 1897, the duty on imported lemons was 1 cent per pound. This duty was raised by the recent act of August 5, 1909, to 1½ cents per pound. This increase of duty appears to have been made upon representations to Congress that it was necessary to have such a protective duty to enable the complainants to sell their product in competition with the Italian or Sicilian lemons in the eastern market. It is represented that in Italy or Sicily the cost of labor in producing lemons is only 25 per cent of what it is in California and that the freight charge from Sicily to New York is only 25 per cent of the freight charge on lemons from California to New York. As, for example, it costs \$1 in labor to produce 100 pounds of lemons in California, while it costs only 25 cents to produce the same quantity of lemons in Sicily. The freight charge on 100 pounds of lemons from California to New York is \$1, while the freight charge on the same quantity of lemons from Sicily to New York is 25 cents. It was upon representing such fact to Congress that the duty was increased one-half cent per pound. It was increased because freight and labor are so much higher in

this country than in Sicily, because the cost of freight and labor in this country was for each \$1 per 100 pounds, and the cost of freight and labor for the foreign producer was for each only 25 cents per 100 pounds. Congress then had in view two facts justifying an increase in the duty on lemons. One was the cost of labor in this country and the other was the fact that the lemon growers in California were required to pay the railroad companies \$1 per 100 pounds for the transportation of their lemons to the New York market.

The purpose of Congress was to protect American industry. But does anyone suppose that Congress would have made such an increase had it been suggested, or even suspected, that the railroad companies would immediately increase their freight rate and appropriate a portion of this protection for their benefit. Manifestly not. The policy of imposing protective duties is for the benefit of the producer and to encourage home productions and home manufactures, and not to increase the cost of railroad transportation. Its ultimate purpose is to develop the country, encourage diversified industries, and save our markets for our own people on at least something like equal terms with the foreign producer. The wisdom of this policy is not a question for the judiciary. It is purely a legislative question. But when such a policy has been adopted and placed on the statute book the courts must give it effect when the issue is presented.

The facts submitted by the defendants in support of the proposed increase of rate are very interesting and make a plausible showing in support of their claim to a higher freight rate than that now prevailing, but I am not satisfied that they are entitled to share in the benefit of this particular increase in the customs duty. Perhaps, later on, when the industry of the lemon grower is firmly established and the market fairly equalized for the home producer, the defendants may properly increase the rate to correspond with other citrus fruits. But for the present the equity of keeping the present rate appears to be with the complainants until the subject can be investigated by the Interstate Commerce Commission. The complainants should give a bond in the sum of \$250,000, conditioned expressly that in the event a rate in excess of the present rate is determined to be just and reasonable the complainants will pay to the railroad companies the difference between the present rate and such rate as determined by the Interstate Commerce Commission. That, I believe, was the condition of the bond given in the Lumber case. Let a temporary injunction issue as prayed for in the bill of complaint.

(The committee thereupon adjourned until to-morrow, Tuesday, February 15, 1910, at 10 o'clock a. m.)



